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IN THE

Supreme Court of the United States

OCTOBER TERM, ~~1945.~~ 5859

No. ~~12,~~ Original 6

UNITED STATES OF AMERICA,

Plaintiff,

vs.

STATE OF CALIFORNIA,

Defendant.

ANSWER OF STATE OF CALIFORNIA

PART II

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IV.
City of Santa Barbara.

(I)

The City of Santa Barbara was established and its boundaries were fixed in the following manner:

1. The Town of Santa Barbara was incorporated by Act of the Legislature of the State of California approved April 9, 1850 (Stats. 1850, Ch. 68). Said Town of Santa Barbara was successor to The Pueblo of Santa Barbara established under the laws of Spain and the Republic of Mexico.

2. The City of Santa Barbara was incorporated by Act of the Legislature of the State of California approved April 18, 1860 (Stats. 1860, p. 197), as amended by Act of the Legislature approved March 10, 1874 (Stats. 1874, p. 330). The 1874 amendment established the southwesterly boundary of the City of Santa Barbara as proceeding southwesterly along Salinas Street

> "to a point in the Santa Barbara Channel one-half mile distant from the shore; thence westerly, parallel with and one-half mile distant from the shore to a point opposite the southwest line of Robbins Street; thence northwest following the direction of the southwest line of Robbins Street, to the point of beginning."

3. A Freeholders' Charter was adopted for the City of Santa Barbara pursuant to the provisions of Article XI, Section 8, of the Constitution of California and was approved by the Legislature on February 20, 1899. (Stats. 1899, p. 450), with its southwesterly boundary extending one-half mile into the Pacific Ocean and Santa Barbara Channel and running one-half mile distant from and parallel with the shore, as established by the Legislature in the year 1874, as aforesaid. Said Charter was

amended in 1917 (Stats. 1917, p. 1825), with its southwesterly boundary extending one-half mile into the Santa Barbara Channel and running along a line

> "parallel to and one-half mile outside of the shoreline of the Santa Barbara Channel."

The present Charter of the City of Santa Barbara approved by the Legislature on January 19, 1927 (Stats. 1927, p. 2064) continued the boundaries of the city as established at the time said Charter of 1927 took effect.

(II)

Grants of all tide and submerged lands within its city boundaries were made by the State of California to the City of Santa Barbara as follows:

1. The City of Santa Barbara was granted all tide and submerged lands situated within the Pacific Ocean and Santa Barbara Channel thereof extending as far as the pierhead line, as established from time to time by the Federal Government, by Act of the Legislature of the State of California approved April 16, 1925 (Stats. 1925, p. 181), to be held by said City for harbor and park purposes, and restraining the City from making grants thereof except as therein provided. Said Legislative grant reads, in part, as follows:

> "There is hereby granted and conveyed to the City of Santa Barbara * * * all the right, title and interest of the State of California, held by said State by virtue of its sovereignty in and to all the tidelands and submerged lands (whether filled or unfilled) situated in and upon that portion of the Pacific Ocean, known as Santa Barbara Channel, in said County and lying between the line of mean high tide and the pierhead line of said Bay, as the same has been or may hereafter be established by the

Federal Government, and between the prolongation of the west boundary line of the City of Santa Barbara into the Pacific Ocean and the prolongation of the east boundary line of said City of Santa Barbara into the said Pacific Ocean * * *."

2. Said grant to the City of Santa Barbara was further extended by Act of the Legislature approved January 29, 1937 (Stats. 1937, p. 73), amending said legislative grant approved April 16, 1925, as aforesaid by

(a) granting and conveying to the City of Santa Barbara the title of the State of California

> "held by said State by virtue of its sovereignty in and to all tidelands and submerged lands bordering upon and lying below the Pacific Ocean, which are within the corporate limits of said City and seaward of the mean high tide line of the Pacific Ocean as the same now exists"

to be held by said City in trust for harbor and park purposes. Said grant excepted and reserved to the State of California all deposits of minerals, including oil and gas, in the lands granted by said Act;

(b) declaring that all reclaimed or filled land or lands formed by accretions due to artificial obstructions lying within the City of Santa Barbara and seaward of the mean high tide line of the Pacific Ocean as it existed on April 16, 1925, bounded on the seaward side by the mean high tide line of the Pacific Ocean existing on the date of said 1937 Act to be free from all trusts and restrictions imposed upon said lands in said 1925 legislative grant, except that the City shall not grant or alien any part thereof, with the right of the City to use or lease said land in parcels not to exceed ten acres to any one person for limited periods not to exceed 25 years; and

(c) authorizing the City of Santa Barbara to convey to the State of California a parcel of described reclaimed or filled tide or submerged lands for the construction and maintenance as a Stadium for Santa Barbara State College.

(III)

1. Commencing in the year 1926, the City of Santa Barbara constructed a breakwater generally described as extending northwesterly into the Pacific Ocean and Santa Barbara Channel thereof. Application was made in the month of August, 1926, by the City to the United States War Department for a permit to construct the breakwater, which said permit was thereupon granted to the City. Thereafter, and in the year 1929, the City of Santa Barbara extended its then existing breakwater northwesterly from the western end of the breakwater to the shore and extended the breakwater easterly from its easterly end a distance of approximately 800 feet. In the month of July, 1929, the City made application to the United States War Department for a permit to extend said breakwater, which permit was thereupon granted to the City by the War Department. Said breakwater and its extension were completed in the year 1929. The approximate cost of the original construction and extension of said breakwater is $750,000.00.

2. By reason of the construction of the Santa Barbara breakwater large portions of the tide and submerged lands formerly a part of the Pacific Ocean and Santa Barbara Channel thereof, and situated within the City limits, were filled by sand and other materials and thereby artifically reclaimed. This condition resulted in the legislation approved January 29, 1937, aforesaid.

(IV)

Portions of the tide and submerged lands were leased by the City of Santa Barbara to the State of California as follows:

1. An indenture of lease was entered into under date of March 24, 1938, between the City of Santa Barbara as lessor and the State of California as lessee of a 5.99-acre parcel of reclaimed tide and submerged lands formerly a part of the Pacific Ocean and Santa Barbara Channel thereof, and described in said lease as beginning at a designated point on the line of ordinary high-water line of the Pacific Ocean as given in a certain 1876 deed, thence 355 feet southeasterly into the Pacific Ocean, thence 735 feet northeasterly in the Pacific Ocean, thence 355 feet northwesterly to a point on the 1876 ordinary high-water line of the Pacific Ocean.

Said lease provided:

(a) that it extend for a term of 99 years;

(b) that the State shall improve the land by erection of the Stadium for Santa Barbara State College at a cost of $30,000 within three years; and

(c) that the lease was made in accordance with the Act of the Legislature granting tide and submerged lands to the City of Santa Barbara approved April 16, 1925, as amended.

Said lease was duly recorded on August 3, 1938, in Volume 438, page 498, Official Records in the Office of the County Recorder of the County of Santa Barbara.

Said Stadium was constructed by the State of California for the Santa Barbara State College, a branch of the University of California.

Said lease dated March 24, 1938, is numbered 6779 in the files of the City of Santa Barbara and is depicted on the map of this area next hereinafter set forth.

(V)

A Naval Armory site was granted to the United States by the City of Santa Barbara covering tide and submerged lands in the Pacific Ocean, since reclaimed, adjoining said Stadium site, in the following manner:

1. A grant to the United States of America by the City of Santa Barbara for a Naval Reserve Armory site of a .918-acre parcel of tide and submerged lands, formerly a part of the Pacific Ocean and Santa Barbara Channel thereof, since artificially filled and reclaimed as a result of the construction of the Santa Barbara Breakwater as aforesaid, was authorized by Act of the Legislature of the State of California approved December 7, 1940 (Stats. 1941, p. 390). Said Act particularly described said .918-acre parcel as adjoining the easterly corner of the tract of land leased to the State of California by the City of Santa Barbara on March 24, 1938, for a Stadium site. Said Act was declared to be an emergency measure necessitated as therein stated by the need for a prompt military and naval armament program and further stated that

> "A portion of the land heretofore granted by the State to the City of Santa Barbara is needed by the United States Government for purposes in connection with this program. In order that the program of armament and protection will not be delayed and that adequate provision for the preservation of the peace of this country can be made as promptly as possible, it is essential that this Act take effect immediately."

2. Said .918-acre parcel of tide and submerged lands, formerly a part of the Pacific Ocean and Santa Barbara Channel thereof, was granted to the United States by the City of Santa Barbara by deed dated February 26, 1942,

and recorded on September 18, 1942, in Volume 556, page 410, Official Records of said County.

Said deed was authorized by resolution of the City Council of the City of Santa Barbara of February 26, 1942.

3. On February 18, 1942, the United States, through its Navy Department, addressed a communication to the Mayor and City Council of the City of Santa Barbara, requesting that the City furnish to the United States a preliminary certificate of title in accordance with an enclosed form for submission to the Attorney General of the United States for his opinion as to title, said letter stating, in part, as follows:

> "As a part of the arrangements to be undertaken by you, it will be necessary for you to furnish, at your expense, a preliminary certificate of title in accordance with the enclosed form, together with the deed conveying the subject property to the United States for submission to the Attorney General of the United States for his opinion as to title. For transmission to the Office of the Judge Advocate General of the Navy, it is requested that this officer be furnished with a correct description of the property, together with a map or plat with the description of the land delineated thereon, including evidence of the authority of the City of Santa Barbara to convey the subject property to the United States of America."

4. Under date of May 5, 1943, the Secretary of the Navy addressed a communication to the Mayor and Council of the City of Santa Barbara accepting on behalf of the United States the lands conveyed by said deed dated February 26, 1942. A copy of said acceptance by the Secretary of the Navy on behalf of the United States on May 5, 1943, is set forth as follows:

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON

MAY 5 1943

Gentlemen:

Pursuant to the authority vested in the Secretary of the Navy by the Act of Congress approved March 27, 1942 (Public Law 507, 77th Congress), the Secretary of the Navy hereby accepts on behalf of the United States the interests in lands given in the following instruments executed by and under direction of the Council and Mayor of the City of Santa Barbara:

1. Deed dated February 26, 1942, authorized by resolution of February 26, 1942.
2. Resolution No. 1722, dated June 2, 1942, as altered by Resolution No. 1729, dated June 11, 1942, and as supplemented by Resolution No. 1745, dated September 17, 1942.
3. Resolution No. 1705, dated February 19, 1942, as altered by Resolution No. 1738, dated July 2, 1942.

The Navy Department appreciates the cooperation which has been extended in these matters.

Very truly yours,

James Forrestal

James Forrestal
Acting

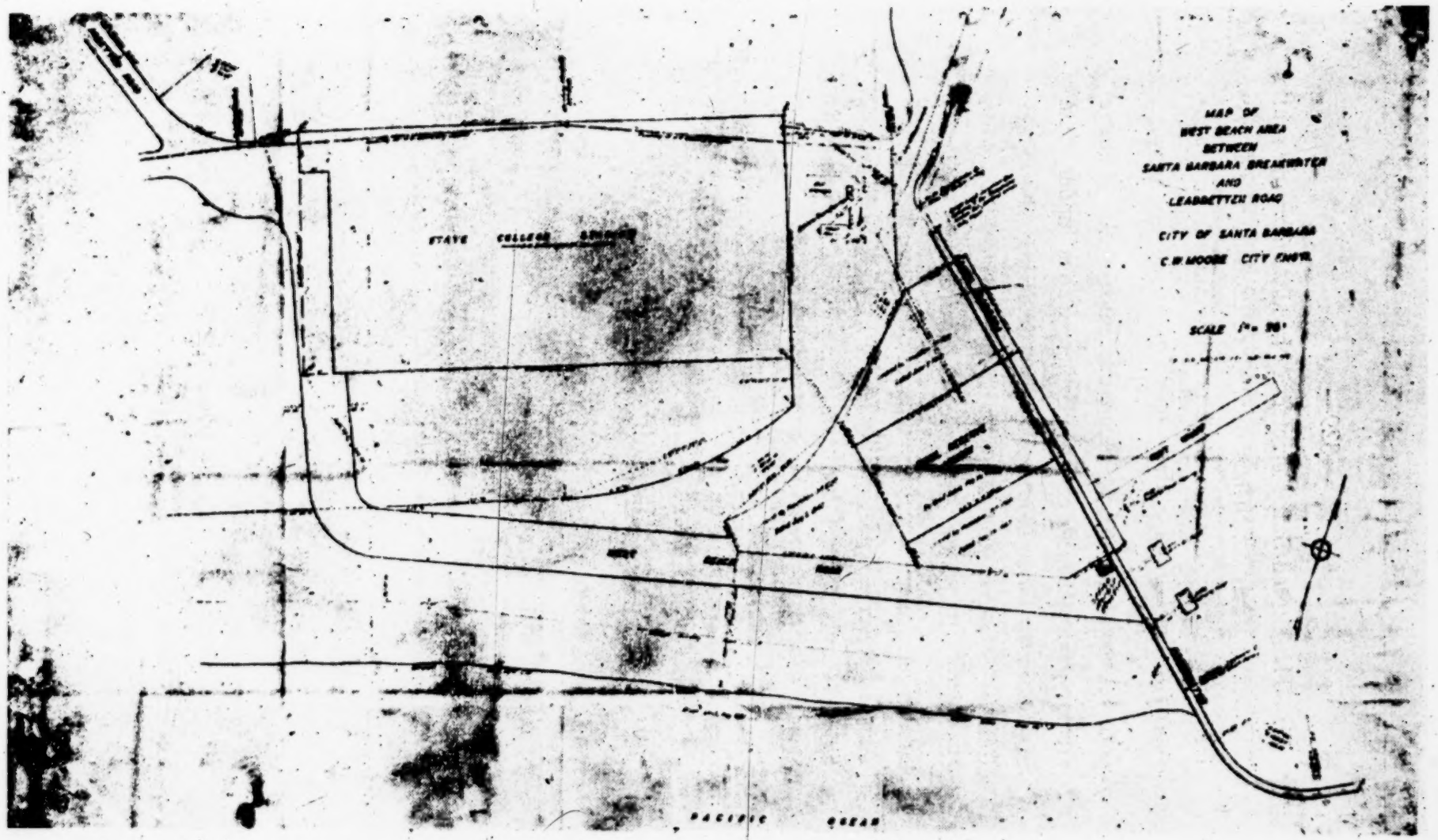
The Mayor and Council of the
City of Santa Barbara,
Santa Barbara, California

FILED May 6 - 1943
Floyd Crawford
CITY CLERK

DEPUTY CITY CLERK

5. The United States erected a Naval Armory on said .918-acre parcel, which has been since used by the Navy Department as a Section Base and has since been transferred to the United States Coast Guard.

6. A copy of a map depicting said Naval Reserve Armory site deeded to the United States under date of February 26, 1942, and also depicting the State College Stadium leased to the State of California on March 24, 1938, and also depicting parcels of tide and submerged lands since reclaimed, adjoining said Naval Armory Reserve, subsequently leased to the United States by the City of Santa Barbara, as hereinafter alleged, is set forth as follows:


MAP OF
WEST BEACH AREA
BETWEEN
SANTA BARBARA BREAKWATER
AND
LEADBETTER ROAD
CITY OF SANTA BARBARA
C.W. MOORE CITY ENGR.
SCALE 1" = 80'
STATE COLLEGE
PACIFIC OCEAN

(VI)

A further grant of an .89-acre parcel adjacent to said Naval Reserve Armory was made to the United States by the City of Santa Barbara of tide and submerged lands in the Pacific Ocean and Santa Barbara Channel thereof, since reclaimed, at the request of the United States Navy, which grant was duly accepted by the United States, in the following manner:

1. At the request of the Navy Department the City Council of the City of Santa Barbara adopted its Resolution No. 1705 on February 19, 1942, granting to the United States an .89-acre parcel for the duration of the present World War surrounding said Naval Reserve Armory site, waiving rental therefor. Said resolution recited that the Naval Armory was then being built by the United States on said Armory site; that the Navy Department required additional real property adjacent to said Armory site for the operation of the Section Base in Santa Barbara; and stated that:

> "Whereas, the City of Santa Barbara *is the owner* of said property described in said Exhibit A [the .89-acre parcel]."

2. Said Resolution No. 1705 was transmitted to the Navy Department, which, in turn, forwarded it to the Judge Advocate General of the Navy. In response thereto on June 19, 1942, the Navy Department addressed a communication to the Mayor and City Council of the City of Santa Barbara acknowledging receipt of said Resolution No. 1705 and stating that the Judge Advocate General of the Navy requested said resolution be amended or a new resolution be adopted to provide that the United States may, at the termination of the present war, remove or otherwise dispose of improvements placed by the Govern-

ment upon the property. There was transmitted with said letter of June 3, 1942, a suggested form of resolution. Said Navy Department letter stated in part as follows:

> "There is enclosed herewith for your consideration a suggested form of resolution which may be adopted or revised as desired to grant to the United States of America, the right to remove or otherwise dispose of structures or improvements placed upon the land."

In response thereto the City of Santa Barbara addressed a communication to the Navy Department on June 29, 1942, proposing a modification of Resolution No. 1705 granting the United States the right to remove improvements constructed upon the property and requiring the United States to restore the property to its original condition upon being vacated and also granting an option to the City to purchase said improvements upon termination.

On June 29, 1942, the Navy Department addressed a communication to the City Attorney of the City of Santa Barbara in response to said letter of June 22, 1942, advising that there would be no objection to the inclusion in the modified resolution of a clause requiring the Government to restore the property to its original condition upon being vacated; but objecting to an option permitting the City to purchase improvements for the stated reason that such would not be in accordance with existing law. Said letter then stated:

> "In this connection it is understood that Senator Hiram Johnson of California is preparing and will introduce legislation during the present Congress which will permit *the owners and former owners of property occupied by the Government* during the war to purchase their property and any improvements

erected thereon after the termination of the present war."

(VII)

Another grant of a 0.78-acre parcel of tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof was made to the United States by the City of Santa Barbara, at the request of the United States Navy, which grant was duly accepted by the United States, in the following manner:

1. The United States, by its Navy Department, requested the City Council of the City of Santa Barbara to grant, and said City Council thereupon adopted its resolution No. 1722 on June 2, 1942, granting, to the United States the use of a described parcel of 0.78 acres of tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof, since reclaimed, for the duration of the present World War, to be used as a part of said Section Base for the Navy. Said parcel immediately adjoins to the north the Naval Reserve Armory site deeded to the United States by the City of Santa Barbara as aforesaid.

Said resolution No. 1722 recites in part that:

"The City of Santa Barbara *is the owner* of said property described in said Exhibit B [the 0.78-acre parcel]."

2. A request from the United States, through its Navy Department, for a lease of this 0.78-acre parcel was contained in a letter dated June 1, 1942, from the United States Navy to the Mayor of the City of Santa Barbara, stating, in part, as follows:

"The functioning of the Section Base, Santa Barbara, will be greatly facilitated after the plot of land

described in the Enclosure A is leased by the City of Santa Barbara to the United States Navy in the same manner as the similar tract of land immediately south of the original tract that was deeded by the City of Santa Barbara to the United States Navy. It is therefore requested that proper action be taken by the City of Santa Barbara to lease to the United States Navy the land described in Enclosure A, providing this can be done without cost to the Navy."

3. The Secretary of the Navy on October 20, 1942 addressed a communication to the Mayor and City Council of the City of Santa Barbara, referring to Resolution No. 1722, and stated that certain real property adjacent to the United States Naval Section Base at Santa Barbara was thereby granted to the United States Navy for the duration of the present emergency. The Secretary of the Navy stated that the adoption of said resolution was appreciated by the Navy as rendering the fullest possible cooperation and assistance. The Secretary of the Navy then accepted the grant contained in Resolution No. 1722 by stating in said letter that:

"The above mentioned resolutions are hereby accepted on behalf of the Navy Department."

4. Said 0.78-acre parcel the use of which was granted by said resolution No. 1722 was, prior to the erection of the Santa Barbara breakwater as above alleged, a part of the Pacific Ocean and Santa Barbara Channel thereof.

(VIII)

A still further grant to the United States by the City of Santa Barbara of an 0.80-acre parcel adjoining said Naval Reserve Armory on the west, consisting of tide and submerged lands in the Pacific Ocean and Santa Barbara Channel thereof, since reclaimed, made at the request of the United States Navy and duly accepted by the United States, was made under the following circumstances:

1. Pursuant to request from the United States, by its Navy Department, the City Council of the City of Santa Barbara adopted its resolution No. 1737 on July 2, 1942, thereby granting to the United States the use of a particularly described 0.80-acre parcel. Said parcel immediately adjoins the Naval Reserve Armory site deeded to the United States as aforesaid. Said resolution recites in part that:

> "The City of Santa Barbara *is the owner* of said property described in said Exhibit 'C' [being the 0.80 acre parcel]."

Said resolution granted to the United States the right to erect structures and buildings upon the property in connection with its Section Base. Said grant was made for the duration of the present war. It granted the United States the right to remove or otherwise dispose of structures or improvements placed by the United States upon the property at the termination of the use of the property

and obligated the United States to restore the property to its original condition.

2. The Navy Department on behalf of the United States on October 2, 1942 addressed a communication to the Mayor of the City of Santa Barbara, referring to the grant to the United States made by said resolution No. 1737, and stated that the Navy Department appreciated the cooperation of the City of Santa Barbara and that the Navy Department

> "accepts the grant of the above described land for the duration of the several wars in which the United States is presently engaged."

3. On December 22, 1942, the Secretary of the Navy addressed a communication to the Mayor of the City of Santa Barbara likewise acknowledging receipt of the grant to the United States by said resolution No. 1737 dated July 2, 1942, and stated in part that:

> "The Navy Department appreciates the interest and cooperation of the City of Santa Barbara and on behalf of the United States, accepts the grant above referred to."

4. The 0.80-acre parcel the use of which was granted to the United States as above set forth was, prior to the construction of the Santa Barbara breakwater, a part of the Pacific Ocean and Santa Barbara Channel thereof.

V.
City of San Diego.

(I)

The City of San Diego was established and its westerly boundary was fixed in the following manner:

1. The City of San Diego was incorporated by the Legislature of the State of California in the year 1850 (Stats. 1850, p. 121).

2. The City of San Diego was reincorporated by Act of the Legislature of the State of California, approved April 1, 1876 (Stats. 75-76, p. 806). By said Act, the boundaries of said City were therein set forth as including all the tract of land known as the "Pueblo of San Diego" included in a designated survey made in the year 1858,

> "except the water-front line on the bay, and this shall be Ship's Channel of the said bay; and the municipal jurisdiction shall extend to said limits and over the waters of said bay, and into the ocean to the extent of one marine league from the shore."

3. A Freeholders Charter was adopted by The City of San Diego pursuant to the provisions of Article XI, Section 8, of the Constitution of California and was approved by the Legislature of the State of California on March 16, 1889 (Stats. 1889, page 643).

4. A new Charter was adopted by The City of San Diego approved by the Legislature of the State of California on April 24, 1931 (Stats. 1931, page 2838). By said Charter the boundaries of The City of San Diego as then

established were continued in effect. By Section 3 of said Charter, it is provided that

> "The municipal jurisdiction of The City of San Diego shall extend to the limits and boundaries of said City and over the tidelands and waters of the Bay of San Diego, and into the Pacific Ocean to the extent of one marine league."

The present Charter of The City of San Diego provides for the establishment of a Harbor Commission, which Commission

> "shall have jurisdiction, supervision, management and control of the Bay of San Diego fronting upon The City of San Diego and within the jurisdiction of said City, including all tide and submerged lands, whether filled or unfilled, situated below the line of mean high tide within the limits of said City. Except, however, such tide and submerged lands which have heretofore or which hereafter may be transferred to the exclusive control of the United States. . . ."

(II)

Tide and submerged lands within the boundaries of The City of San Diego were granted to it by the Legislature of the State of California.

1. The Act of the Legislature approved May 1, 1911, (Stats. 1911, p. 1357) recited in part that

> "Whereas, Since the admission of California into the Union, all tide lands along the navigable waters of this state and all lands lying beneath the navigable waters of the state have been and now are held in trust by the state for the benefit of all the inhabitants thereof for the purposes of navigation, commerce and fishing;"

Said Act thereupon

> "granted and conveyed to the city of San Diego * * * all of the lands situate on the city of San Diego side of said bay, lying and being between the line of mean high tide and the pier head line in said bay, as the same has been or may hereafter be established by the federal government, and between the prolongation into the bay of San Diego to the pier head line of the boundary line between the city of San Diego and National City, and the prolongation into the Bay of San Diego to the pier head line of the northerly line of the United States military reservation on Point Loma."

Said Act prohibited all grants or conveyances of the lands thereby conveyed but authorized certain types of leases for limited periods. Said conveyance was made upon condition that The City of San Diego within a specified period shall issue bonds for harbor improvement purposes in an amount not less than $1,000,000 and commence work of improvement within a designated period.

2. Said legislative grant of tide and submerged lands to The City of San Diego by the Act approved May 1, 1911, as aforesaid, was amended in the year 1913 (Stats. 1913, p. 77), in the year 1915 (Stats. 1915, p. 1323), again in 1917 (Stats. 1917, p. 1943), in 1929 (Stats. 1929, p. 1058), in 1943 (Stats. 1943, Ch. 70), and in 1945 (Stats. 1945, Ch. 222).

3. The ownership of the tide and submerged lands by The City of San Diego, as successor of the State of California through said Act of the Legislature of May 1, 1911, as amended, was reported to the Congress by the Chief of Engineers and Secretary of War under date

of January 21, 1920, as contained in House Document No. 652, 66th Congress, 2nd Session, page 1917. Said report was rendered to Congress pursuant to the requirement of the Act of Congress approved July 18, 1918, requiring a report on water terminal and transfer facilities including among other things a statement of "whether such terminals are publicly or privately owned." Said report stated in this connection that:

> "The *City of San Diego owns* the tide lands along its entire water front, about 11 miles in extent which were granted from the State by act of legislature upon condition that the City expend the sum of $1,000,000 on harbor improvements in the bay of San Diego. These improvements have been made, at a total cost of $1,500,000, and consist of one municipal pier 130 feet by 800 feet; also 2750 feet of reinforced concrete seawall; and the dredging of approximately 2,000,000 cubic yards of material."

Likewise, the Commission on Navy Yards and Naval Stations reported to Congress in its report dated January 31, 1917 (House Document No. 1946, Part 3, *supra,* page 30) that:

> "Since 1911 the City of San Diego has owned its waterfront and the tide lands adjacent thereto—about 1350 acres in extent."

(III)

The City of San Diego was authorized from time to time by the Legislature of the State of California to grant parcels of said tide and submerged lands within The City of San Diego to the United States of America, or such grants to the United States were ratified by said Legislature.

1. In the year 1917 The City of San Diego was authorized by the Legislature of the State of California to convey to the United States a 500-acre parcel of tide and submerged lands. (Stats. 1917, p. 1943.) Said Act declared that The City of San Diego had completely performed all the conditions set forth in the Act of May 1, 1911, as amended,

> "and that the title to the tide lands therein described is vested in The City of San Diego, subject only to the public trusts therein enumerated; *provided, that The City of San Diego is hereby authorized to convey to the United States of America 500 acres, more or less, of said lands, free of said public trusts.*"

(a) By Act of Congress approved August 29, 1916, the Secretary of the Navy was authorized to purchase a 232-acre tract of upland and marshland fronting on the Bay of San Diego from San Diego Securities Company, the then owner, for a sum not in excess of $250,000, to be used for an advanced base, expeditionary, and aviation purposes. A condition of this appropriation by Congress was that The City of San Diego donate to the United States 500 acres of adjoining tide and submerged lands, known as Dutch Flats, for the purpose of establishing a naval base thereon.

(b) By Act of Congress approved July 27, 1916, a sum of $220,000 was appropriated by Congress for the improvement and maintenance of San Diego Harbor, but upon the condition that the 500-acre parcel of tide and submerged lands known as Dutch Flats, above-mentioned, likewise be donated by The City of San Diego to the United States. The improvement contemplated by said Act of Congress consisted of dredging in the Bay of San

Diego in the vicinity of the municipal pier and depositing the dredged materials in the 232-acre tract of marshland and upland above mentioned.

Said Act of Congress approved July 27, 1916 (Stats. 1939, p. 404) reads in part, as follows:

> "San Diego Harbor, California: For improvement and maintenance $220,000, in accordance with House Document Number six hundred forty-eight, sixty-fourth Congress, first session: Provided, this appropriation is made on the condition precedent *that the City of San Diego shall donate to the United States Government five hundred acres of tide lands known as Dutch Flats.*"

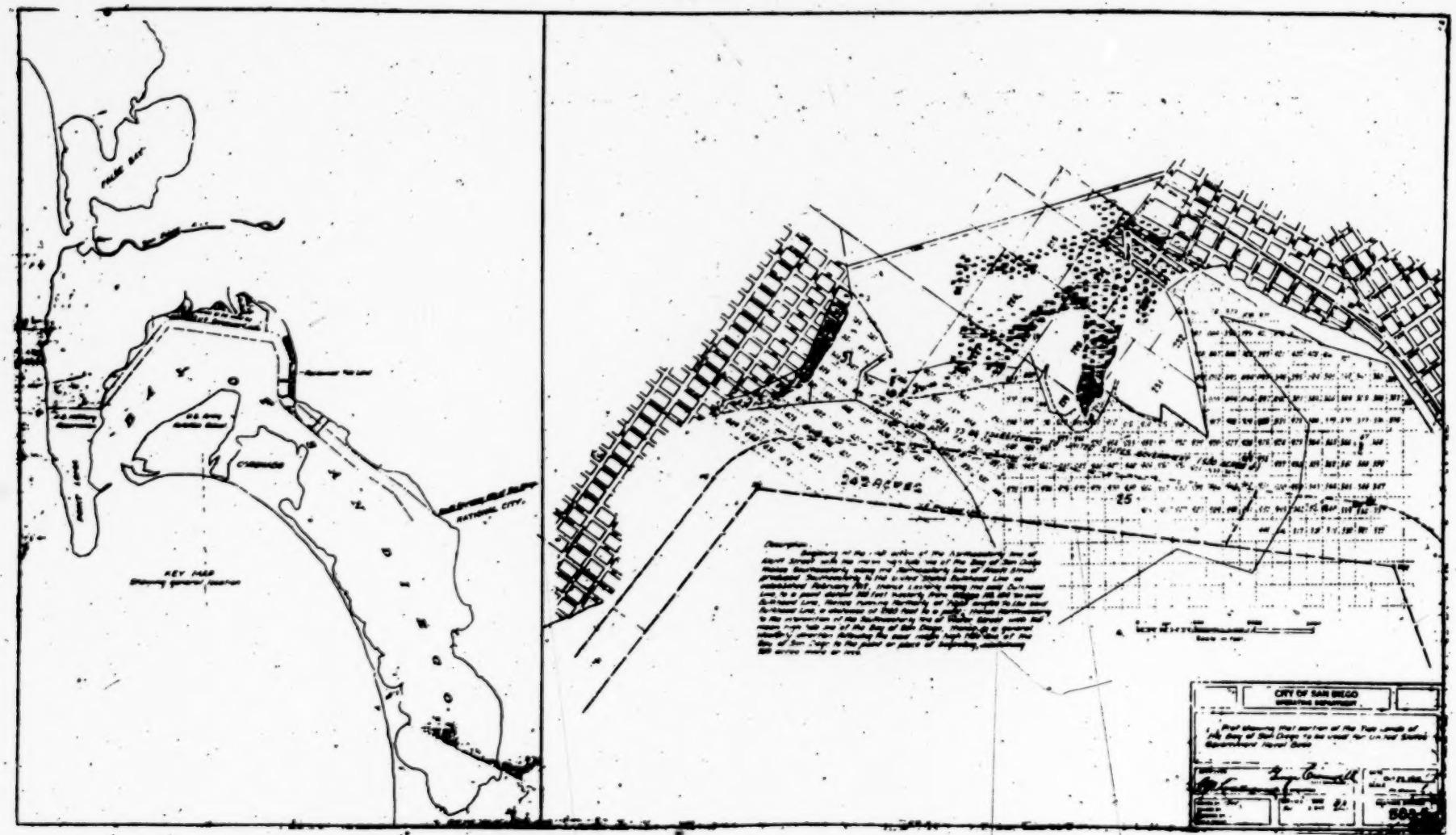
(c) A report of the Commission on Navy Yards and Naval Stations, dated January 31, 1917, was submitted to Congress in House Document No. 1946, Part 3, 64th Congress, 2nd Session, page 12. Said report considered said 500-acre tract known as Dutch Flats, above mentioned, and the condition imposed by Congress requiring that it be conveyed to the United States by The City of San Diego, and in this connection stated:

> "An act of Congress, approved August 29, 1916, authorized the Secretary of the Navy to purchase 232 acres of land fronting on San Diego Bay, for not over $250,000, to be used for advance-base, expeditionary, and aviation purposes; *provided the city of San Diego donated to the United States 500 acres of adjoining tidelands, known as Dutch Flats,* 'for the purpose of establishing a naval base thereon.' Similarly, an act of Congress, approved July 27,

1916, contained an appropriation of $220,000 for the improvement and maintenance of San Diego Harbor, *contingent also upon 500. acres of tidelands being donated to the United States by the city of San Diego.* The improvement contemplated consists of dredging in the vicinity of the municipal pier and using the material to fill in the marshland which forms about half of the 232-acre tract. *This leaves the filling in of the 500 acres of tide and submerged land to be arranged for later. The city of San Diego confirmed, by a special election held November 17, 1916, the transfer of the 500-acre tract to the United States.* As soon as this tract is accepted and the United States has purchased the 232-acre tract from the San Diego Securities Co., the present owner, the War Department will proceed with the dredging around the municipal pier by contract, the specifications already prepared requiring the contractor to dispose of the material where desired by the Navy Department, either on the 232-acre or 500-acre tract. *The question of title to these lands is now under consideration and investigation by the United States attorney at Los Angeles."*

(d) On November 17, 1916, the electors of The City of San Diego at a municipal election authorized the grant of the City of San Diego to the United States of said 500-acre parcel of tide and submerged lands.

A plat delineating said 500-acre parcel of tide and submerged lands and said 242-acre parcel hereinbefore mentioned, is set forth as follows:


142 Acres
25
CITY OF SAN DIEGO

2. At the request of the United States, a naval supply base and landing site was granted and conveyed to the United States by The City of San Diego by deed dated September 3, 1919. The land granted contained approximately 1½ acres of reclaimed tide and submerged lands, in said deed described as "Block 14 and the part lying northwest of said block of the Municipal Tidelands Subdivision, Tract No. 1, according to the map thereof filed in the office of the City Clerk of said The City of San Diego May 18, 1916."

Said deed of September 3, 1919 was thereafter ratified, confirmed and approved by the electors of The City of San Diego voting at a special municipal election of August 3, 1920, wherein the proposition of approving said grant was submitted to the electorate.

The grant effected by said deed of September 3, 1919, was regranted and confirmed by Act of the Legislature of the State of California approved April 28, 1921 (Stats. 1921, p. 55).

3. At the request of the United States a naval hospital site was granted by deed dated September 3, 1919, by The City of San Diego to the United States consisting of a 17.04 acre parcel of former tide and submerged lands since reclaimed. Said deed was subsequently ratified and approved by the electors of The City of San Diego at a special election held August 3, 1920. Said grant was confirmed and regranted by the Legislature of the State of

California by Act approved April 28, 1921 (Stats. 1921, p. 54).

4. At the request of the United States, a naval training station site was granted on October 9, 1919, by The City of San Diego to the United States consisting of a parcel of tide and submerged lands in the Bay of San Diego lying between the line of mean high tide and the United States Bulkhead line. Said deed of October 9, 1919 was thereafter ratified and approved by the electors of The City of San Diego at a municipal election held August 3, 1920. Said grant was likewise confirmed and validated by the Act of the Legislature of the State of California, approved April 28, 1921 (Stats. 1921, p. 55).

5. The City of San Diego executed a deed dated September 3, 1919, granting to the United States a site for an emergency fleet plant, naval repair station, shipyard, drydock station or similar purposes, covering certain described tide and submerged lands in the Bay of San Diego lying between the line of mean high tide of said Bay and the United States Bulkhead line. Said deed of September 3, 1919 was likewise ratified and approved by the electors of The City of San Diego at a municipal election held August 3, 1920. Said deed was confirmed and validated by the Legislature of the State of California by Act approved April 28, 1921 (Stats. 1921, p. 56).

Said parcel of tide and submerged lands was thereafter used by the United States as and for its Naval Destroyer Base in San Diego Bay.

Thereafter, the United States, through its Commandant of the Eleventh Naval District, communicated with the Mayor and City Council of the City of San Diego, requesting an additional grant of a parcel lying to the west of and adjoining said Naval Destroyer Base, and in said communication stated as follows:

> "As you know, the Naval Destroyer Base in San Diego is located on land donated by the City in 1919, being a part of a tract leased to the United States Shipping Board Emergency Fleet Corporation in 1918.
>
> "The gift of land for naval uses followed the boundaries of the tract leased to the Emergency Fleet Corporation, except at the northwesterly end thereof, where an area of approximately 32 acres was excluded for reasons now unknown. The present status of this 32 acre tract, therefore, is under lease to the Government for a period of 50 years from 1918.
>
> "The Commandant is informed that projected development at the Destroyer Base will require additional land at the north end and that it is extremely desirable that the Government obtain the fee to the 32-acre tract above mentioned, as permanent improvements cannot be constructed on leased property."

Subsequently, a deed dated July 17, 1940, was executed by the City of San Diego, granting to the United States a 14.51-acre parcel of tide and submerged lands in the Bay of San Diego, lying to the west of and adjoining the said Destroyer Base. Said deed was authorized to be executed

by the electors of the City of San Diego at an election held on March 28, 1939.

6. The City of San Diego was authorized to convey to the United States a pier site and sites for boat landing purposes by Act of the Legislature of the State of California, approved May 17, 1923 (Stats. 1923, p. 392). The lands thus authorized to be conveyed to the United States were parcels of submerged lands. The pier site consisted of a strip 1000 feet long and 100 feet wide lying between the Bulkhead line and the Pierhead line of San Diego Bay.

The City of San Diego executed its deed dated November 26, 1923, conveying to the United States, pursuant to said Act approved May 17, 1923, three parcels, one for a pier and the others for boat landing purposes, consisting of submerged lands in the Bay of San Diego lying between the bulkhead and pierhead lines.

7. By deed dated July 17, 1940, The City of San Diego conveyed to the United States a 2.76 acre parcel of submerged lands lying between the United States Bulkhead and Pierhead lines in the Bay of San Diego immediately adjoining the Navy pier site conveyed to the United States by November 26, 1923 deed, above mentioned. Said parcel of submerged lands is a strip 1000 feet long and 120 feet wide.

8. The City of San Diego executed a deed conveying a parcel of tide and submerged lands to the United States as a site for a naval hospital lying adjacent to the naval

hospital site conveyed by deed dated September 3, 1919, above mentioned. Said grant was approved by the electors of The City of San Diego at a municipal election held March 24, 1925. Said grant was also confirmed and validated by Act of the Legislature of the State of California approved May 23, 1925 (Stats. 1925, p. 621).

9. The City of San Diego executed its deed granting to the United States as a site for pier purposes for the Navy Department a tract of submerged lands lying adjacent to the land conveyed by The City of San Diego to the United States for a drydock station or similar purpose, dated September 3, 1919, above mentioned. Said conveyance was ratified and approved by the electors of The City of San Diego at a municipal election held on March 24, 1925. Said conveyance was likewise confirmed and validated by Act of the Legislature of the State of California approved May 23, 1925 (Stats. 1925, p. 622).

10. On November 4, 1937, the City of San Diego executed a deed conveying to the United States a 5.24-acre parcel of tide and submerged lands to be used as a part of its Marine Corps Base. The grant of said 5.24-acre parcel, together with certain other lots of the City, were granted to the United States in exchange for a 60.16-acre parcel of land owned by the United States, adjoining the municipal airport.

Said deed from the City of San Diego was authorized by resolution of its City Council adopted June 8, 1937, reciting that said grant had been approved by the elec-

torate of the City of San Diego, voting thereon on May 5, 1936, pursuant to the Act of the Legislature of the State of California, approved July 14, 1929 (Stats. 1929, Chapter 808), being entitled "An Act authorizing and empowering any municipal corporation to which tidelands and submerged lands, situated within the limits thereof, have been, or may hereafter be granted by the State of California, to grant all or any portion of such lands to the United States for public or governmental (including military or naval) purposes, and validating and confirming grants of such lands made by such municipal corporations to the United States." Said deed was executed pursuant to a resolution dated June 10, 1937, of the Harbor Commission of the City of San Diego.

By Act of Congress approved March 4, 1937, the Secretary of the Navy, on behalf of the United States, was authorized to accept said deed from the City of San Diego in exchange for said 61.16-acre parcel.

Said deed was recorded in Book 737, page 95, Official Records, in the Office of the County Recorder of San Diego County.

11. The City of San Diego, as lessor, executed a lease with the United States, as lessee, dated April 10, 1941, leasing a 5.4-acre parcel of tide and submerged lands adjoining the United States Destroyer Base in the Bay of San Diego. Said parcel was situated between the line of mean high tide and the United States bulkhead line in said Bay. Said lease was recorded at the request of

the United States in Book 1207, page 220, Official Records of said County.

12. By resolution of the City Council and the Board of Harbor Commissioners of the City of San Diego, adopted December 10 and December 5, 1935, respectively, there was authorized the execution of a deed from the City of San Diego to the United States, granting a 5000 sq. ft. site of tide and submerged lands for air—and seaplane hangers. Said grant was authorized by the electors of the City of San Diego at an election held on April 23, 1935. Said deed is recorded in Book 446, page 372, Official Records of the County of San Diego.

13. A lease was executed between the City of San Diego, as lessor, and the United States, as lessee, dated January 1, 1941, thereby leasing three parcels of tide and submerged lands, since reclaimed, constituting a part of the San Diego municipal airport, Lindbergh Field. Said lease is recorded in Book 1223, page 347, Official Records, San Diego County.

14. A lease was executed between the City of San Diego, as lessor, and the United States, as lessee, dated April 10, 1941, leasing a 4.893-acre parcel of tidelands. Said lease is recorded in Book 1194, page 395, Official Records of San Diego County.

15. By indenture dated July 13, 1938, the City of San Diego granted a 1.37-acre parcel and a 1.24-acre parcel of tide and submerged lands to the United States in exchange for a grant from the United States to the City

of San Diego of a described portion of the former military reservation known as San Diego barracks. Said indenture was executed by the United States by its Secretary of the Navy. By Act of Congress approved June 20, 1938, the Secretary of the Navy was authorized to accept said grant of tide and submerged lands from the City of San Diego in consummating said exchange. Said indenture is recorded in Book 835, page 487, Official Records of San Diego County.

16. A lease was executed between the City of San Diego, as lessor, and the United States, as lessee, dated April 10, 1941, covering a 2.34-acre parcel of tide and submerged lands in the Bay of San Diego, to be used for Federal housing facilities. Said deed is recorded in Book 1199, page 269, Official Records of San Diego County.

17. By deed dated June 19, 1945, the City of San Diego granted to the United States an 11.23-acre parcel of tide and submerged lands adjoining the municipal airport, Lindbergh Field. Said deed was authorized by the electors of the City of San Diego at an election held on April 19, 1945. Said deed is recorded in Book 1896, page 469, Official Records of said County.

18. By deed dated August 3, 1933, The City of San Diego granted to the United States a 242-acre parcel of tide and submerged lands lying between the United States Bulkhead line and the Pier head line. Said conveyance was authorized by the electors of The City of San Diego at a municipal election held November 4, 1930. Said deed

was recorded at the request of the United States in Book 239, page 409, Official Records of San Diego County.

19. Other conveyances from The City of San Diego to the United States of former tide and submerged lands lying in the Bay of San Diego are:

Conveyance by deed dated July 13, 1938;
Conveyance by deed dated July 17, 1940;
Conveyance by deed dated September 4, 1940;
Conveyance by deed dated November 16, 1943.

VI.
City of Coronado.

(I)

The City of Coronado was established and its boundaries were fixed as follows:

1. The City of Coronado is a municipal corporation of the sixth class duly incorporated under the provisions of the Municipal Incorporation Law.

2. The ocean and bay boundaries of the City of Coronado were duly established as set forth in Ordinance No. 274 under date of February 17, 1912, as follows:

> "Beginning at a point on the boundary of said city at the low water mark on the shore of the Pacific Ocean at a point 1000 feet southeast of the southeast corner of the Hotel Del Coronado; thence due northeast along the boundary of said city across the peninsula of San Diego to low water mark on the shore of Glorietta bay; thence southeast along low water mark following the shore of Glorietta and San Diego bay to an intersection of said low water line with a line that bears north 39° east from Survey Station No. 7, said Survey Station No. 7 being one of the corners marking a tract of land sold by the Coronado Beach Company to the United States Government for coast defense purposes; thence southwest across the peninsula of San Diego to low water mark on the shore of the Pacific Ocean; thence northwest along said low water mark of the Pacific Ocean to the point of beginning."

(II)

The State of California conveyed certain tide and submerged lands to the City of Coronado.

1. By Act of the Legislature approved April 27, 1923 (Stats. 1923, p. 85) tide and submerged lands were granted to said city as follows:

> "There is hereby granted and conveyed to the City of Coronado * * * all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the tide lands and submerged lands (whether filled or unfilled) within the present boundaries of said city, and situate upon the Coronado side of the bay of San Diego * * * lying between the line of mean high tide and the pier head line in said bay, as the same has been or may hereafter be established by the Federal Government, and between the prolongation of the easterly boundary line of the City of Coronado into Glorietta bay, a portion of the said San Diego bay, and the prolongation of the westerly boundary line of the City of Coronado into Spanish bight, a portion of said San Diego;"

to be held in trust for harbor purposes and for promotion of commerce, navigation, fishery and bathing purposes. Said grant restricted the City of Coronado from making conveyances or leases thereof except upon specified conditions.

2. Said legislative grant was amended by Acts of the Legislature of the State of California in 1929 (Stats. 1929, p. 1172); in 1933 (Stats. 1933, p. 2217); and in 1939 (Stats. 1939, Ch. 893).

(III)

The City of Coronado has granted to the United States leases and other interests in and to portions of its tide and submerged lands, from time to time, and the United States has condemned fee interests and leasehold interests in and to portions of the tide and submerged lands of the City of Coronado.

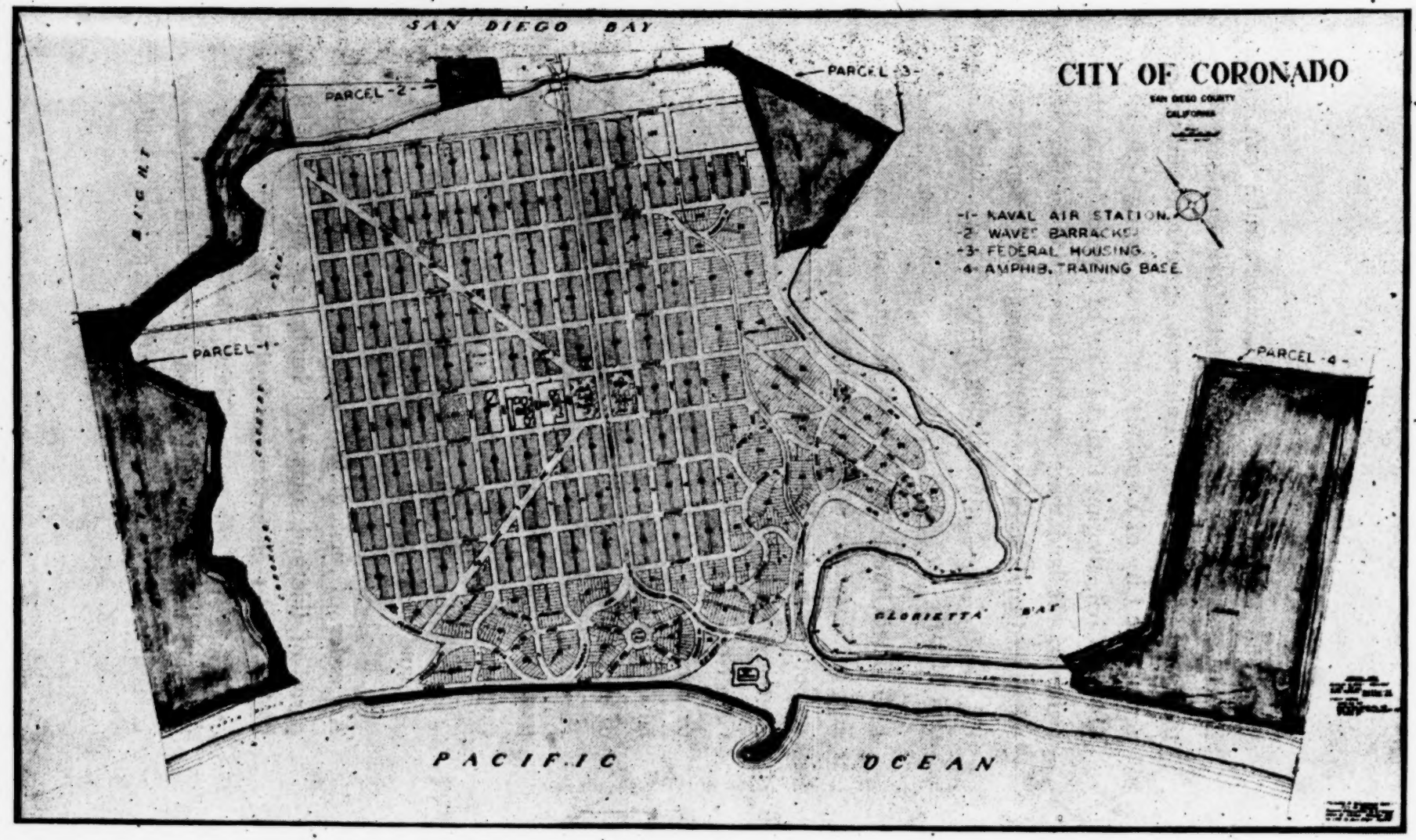
Three of these transactions, involving separate parcels, are hereinafter described and are set forth on the map next hereinafter set forth:

Parcel 1 shows a condemnation of tide and submerged lands in Spanish Bight for Naval Air Station.

Parcel 3 shows a condemnation of a leasehold interest for a Federal Housing Project.

Parcel 4 shows a lease for an Amphibious Training Base.

The map depicting these parcels is set forth as follows:


SAN DIEGO BAY
CITY OF CORONADO
SAN DIEGO COUNTY
CALIFORNIA
PARCEL -1-
PARCEL -2-
PARCEL -3-
PARCEL -4-
-1- NAVAL AIR STATION.
-2- WAVES BARRACKS.
-3- FEDERAL HOUSING.
-4- AMPHIB. TRAINING BASE.
GLORIETTA BAY
PACIFIC OCEAN

1. The United States filed a condemnation suit on March 22, 1944, in the United States District Court for the Southern District of California, Southern Division, against the City of Coronado and others, being Case No. 414-SD-Civil, alleging that the City of Coronado was the owner of the land there involved, consisting of tide and submerged lands in Spanish Bight, sought to be condemned for a Naval Air Station (being Parcel No. 1 depicted on said Map).

2. The United States brought condemnation proceedings on September 8, 1943, against the City of Coronado and others in the United States District Court for the Southern District of California, Southern Division, being Case No. 319-SD-Civil. The United States thereby sought to condemn a 56.99-acre parcel of tide and submerged lands within the City of Coronado, lying between the line of mean high tide and the United States Bulkhead line, (being Parcel No. 3 depicted on said Map), alleging, in part, that the City of Coronado and two named private corporations

> "are the apparent and presumptive owners of the land hereinbefore described."

An order of immediate possession for said 56.99-acre parcel of tide and submerged lands was obtained by the United States on September 9, 1943. Judgment of condemnation was entered in March, 1945, condemning a leasehold interest in said parcel of tide and submerged lands in the City of Coronado for the purpose of establish-

ing and erecting a Federal Housing Project. By the terms of said judgment, the United States was ordered to pay annual rental to the City of Coronado of $3000 per year for the use of said land.

3. On May 15, 1943, a lease was entered into between the City of Coronado, as lessor, and the United States, as lessee, leasing a 134-acre parcel of tide and submerged lands owned by the City of Coronado, to be used by lessee as an Amphibious Training Base for the United States Navy (being said Parcel No. 4 depicted on said Map). Said lease was for a period of one year with a right of renewal, but not beyond six months after cessation of hostilities. The rental was $1.00 per year and the cost of publication of the City Ordinance required by State law in connection with the lease. As an additional consideration from the United States to the City of Coronado for this lease, Paragraph 12 of said lease provides as follows:

> "12. As an additional and further consideration for the lease of the herein mentioned premises, it is agreed that at the expiration or termination of this lease as herein provided, title to all improvements placed upon or within the leased land, including all sewer disposal facilities; water pipes, power and light distribution lines; streets; sidewalks; trees; shrubs and other landscaping, shall pass to and vest in the Lessor; provided, with respect to each such improve-

ment, that the cost of removing the same and restoring the property to the conditions described in paragraph 8 hereof shall equal or exceed the salvage value of such improvement."

United States Standard Form Lease No. 2 was used in the execution of said May 15, 1943, lease.

Ordinance No. 698 of the City of Coronado was adopted by the City Council of the City of Coronado on September 21, 1943, authorizing the Mayor of said City, on behalf of the City, to enter into said lease with the United States describing:

"Those premises consisting of said public lands and lands adjacent thereto conveyed to the City of Coronado by the State of California under the provisions of that certain Act of the Legislature entitled 'An Act conveying certain tidelands and lands lying under navigable waters situated in the Bay of San Diego to the City of Coronado in furtherance of navigation, commerce and fisheries, and providing for the government, management and control thereof,' approved April 27, 1923, as amended to date: Said tidelands and other public lands herein leased being more particularly described as follows: . . ."

Said Ordinance No. 698 is the ordinance referred to in the lease which the United States, as lessee, was required to pay the costs of publication.

VII.
City of National City.

(I)

The City of National City was organized and its boundaries established as follows:

1. The City of National City is a municipal corporation incorporated on September 17, 1889, as a city of the sixth class under the Municipal Incorporation Law of the State of California.

2. The boundaries of the City of National City were established in its Act of Incorporation on September 17, 1889, as adjoining the south boundary line of the City of San Diego, with its westerly boundary line extending to the line of ship's channel in the Bay of San Diego.

(II)

Tide and submerged lands in the Bay of San Diego were granted to the City of National City by the State of California as follows:

1. By Act of the Legislature of the State of California approved March 21, 1917 (Stats. 1917, p. 18), the grant was made reading, in part, as follows:

> "There is hereby granted and conveyed to the City of National City . . . all of the land situate on the City of National City side of said Bay, lying and being between the line of mean high tide and the pierhead line in said Bay, as the same has been or may hereafter be established by the Federal Government and between the prolongation into the Bay of San Diego to the pierhead line of the boundary line between the City of National City and the City of San Diego, and the prolongation into the Bay of San Diego to the pierhead line of the boundary line between the City of National City and the City of Chula Vista."

2. Said Legislative grant of tide and submerged lands to the City of National City was amended by Act of the Legislature approved April 27, 1923 (Stats. 1923, p. 81) and again in 1925 (Stats. 1925, p. 112).

(III)

Portions of the tide and submerged lands owned by the City of National City, as aforesaid, were granted to or condemned by the United States, as follows:

1. A deed dated December 3, 1940, was executed by the City of National City, granting to the United States a 96.42-acre parcel of tide and submerged lands lying between the line of mean high tide and the pierhead line of the Bay of San Diego, for the purpose of maintaining piers, landings, buildings and structures to be used by the United States Navy with a right of reverter to the City of National City in the event the United States failed to use said tide and submerged lands for a period of ten successive years. Said deed was authorized by the electors of the City of National City at an election held on May 2, 1939. Said deed was recorded at the request of the United States Navy in Book 1307, page 259, Official Records of San Diego County.

2. The United States filed a condemnation proceeding against the City of National City in the United States District Court for the Southern District of California, Central Division, being Case No. 219-SD-Civil. The judgment in condemnation was entered on September 4, 1943, condemning a 5.8-acre parcel of tide and submerged lands owned by the City of National City lying in the Bay of San Diego. Said judgment is recorded in Book 1594, page 231, Official Records of San Diego County.

VIII.

City of Oakland.

The City of Oakland, a municipal corporation of the State of California, located on the eastern shore of San Francisco Bay in the County of Alameda, has made numerous grants and leases of tide and submerged lands to the United States at the instance and request of the United States; and the United States has, in the exercise of its right of eminent domain, taken by condemnation various parcels of tide and submerged lands owned by the City of Oakland, and has paid awards to the City of Oakland as compensation therefor.

(I)

The City of Oakland was incorporated and its boundaries were established in the following manner:

1. The Town of Oakland was originally incorporated by an Act of the Legislature of the State of California approved May 4, 1852 (Stats. 1852, p. 180). Thereafter the said City of Oakland was incorporated as successor to the said Town of Oakland by an Act of said Legislature approved March 25, 1854 (Stats. 1854, p. 183). Thereafter the electors of the City of Oakland, acting pursuant to Section 8 of Article XI of the Constitution of the State of California, adopted and ratified a Freeholders Charter, which was approved by said Legislature on February 14, 1889 (Stats. 1889, p. 513). Said Charter was thereafter superseded by a new Charter, approved by said Legislature on February 15, 1911 (Stats. 1911, p. 1551). Said Charter of 1911, as amended from time to time, is now in full force and effect.

2. Said City of Oakland is situated on the eastern shore of San Francisco Bay almost directly opposite the City of San Francisco. The southerly boundary of said City of Oakland, as established by said Charter of 1889 and continued in effect by said Charter of 1911, and as it now exists and has existed at all times hereinafter mentioned, follows the center line of San Antonio Estuary (which is a tidal arm of San Francisco Bay) to a point in San Francisco Bay; and the westerly boundary of said City of Oakland, established and existing as aforesaid, is located in San Francisco Bay at a distance which varies from approximately one mile to in excess of three miles westerly from the line of ordinary high tide on the easterly shore of said Bay as it existed in 1850. Said westerly boundary of the City of Oakland is coincident with the easterly boundary of the City and County of San Francisco and runs approximately north and south at a distance of approximately three thousand feet easterly of Yerba Buena Island, which is located in said Bay.

(II)

The State of California has at various times, by Acts of its Legislature, granted to the City of Oakland all tide lands and submerged lands of the State located within the boundaries of the City of Oakland, in trust for harbor purposes.

1. Among the Acts of the Legislature containing such grants are the following: Stats. 1909, p. 665, as amended by Stats. 1939, pp. 1258, 1261; Stats. 1911, p. 1254; Stats. 1911, p. 1258, as amended by Stats. 1917, p. 63; Stats. 1919, p. 1088; Stats. 1937, p. 335, and Stats. 1939, p. 1260; Stats. 1923, p. 416; Stats. 1931, p. 1346, as

amended by Stats. 1937, p. 2500; Stats. 1937, p. 115; Stats. 1937, p. 752, and Stats. 1943, p. 2189.

2. By an amendment to the 1911 Charter of the City of Oakland, which amendment was ratified by the electors of said City at a special election held for that purpose on December 21, 1926, and which was approved by the Legislature of the State of California on January 17, 1927 (Stats. 1927, p. 1978), a new Article XXV was added to said Charter, whereby a Port Department was established in the City of Oakland under the control and management of a Board of Port Commissioners and said Port Department was charged with the control and supervision of the Port of Oakland, including all water front properties and lands adjacent thereto or under water and including all tide or submerged lands granted to said City in trust by the State of California.

(III)

During or prior to the year 1936, negotiations were commenced between the United States, acting by and through its Navy Department, and the City of Oakland, looking toward the acquisition by the United States of certain lands in the Middle Harbor Area of the Port of Oakland for the creation and installation of a Naval Supply Depot. All lands involved in said negotiations and in the conveyances hereafter mentioned in this Paragraph (III) are and were tide or submerged lands located below the line of ordinary high tide of San Francisco Bay as the same existed in 1850, and some of said lands were, at the time of said negotiations and of said conveyances, submerged beneath the waters of said Bay. The United States requested the City of Oakland to convey, and pursuant to such request said City of Oakland did convey, to

the United States certain of said tide and submerged lands. In this connection defendant alleges as follows:

1. Acquisition of such lands by the United States was authorized by an Act of Congress approved June 2, 1939 (53 Stats. at L. 800), the provisions of Section 3 of which read in part as follows:

> "Sec. 3. (a) The Secretary of the Navy is hereby authorized to accept or acquire title in fee simple at a cost of not more than $300,000 to all that area of land, *including tide and submerged lands, filled and unfilled,* situate, lying and being in the middle harbor area of the City of Oakland, County of Alameda, State of California, *now owned in part by said City of Oakland and in part by the Southern Pacific Company,* and described in a so-called Map and Description of Naval Supply Depot Site, dated September 17, 1936, as Parcels A, B, D, D-1, D-2, D-3 and E, containing in all four hundred and two acres, more or less, for use as a site for a naval supply depot. . . ." (Italics added.)

2. Title to such lands was acquired by the City of Oakland from the State of California by an Act of the Legislature of the State of California approved May 1, 1911 (Stats. 1911, p. 1258), by which said State granted to said City of Oakland "all the right, title and interest of the State of California held by said state by virtue of its sovereignty in and to all tide lands and submerged lands whether filled or unfilled, which are included within that portion of the city of Oakland that lies westerly of the western line of Pine Street . . .", in trust for harbor purposes, and subject to the reservation by the State of California of the right to use without charge any harbors, wharves, docks, piers or other improvements constructed

or erected by the City of Oakland or its successors on the lands so conveyed for any vessel or railroad owned or operated by said state.

3. The 1911 Charter of the City of Oakland was amended at a municipal election held for such purpose on November 3, 1936, and such amendment was approved by the Legislature of the State of California on January 8, 1937 (Stats. 1937, p. 2631), whereby the City Council and Board of Port Commissioners were authorized and empowered to grant to the United States all or any portion of the tide and submerged lands located in the Middle Harbor area of said city including the parcel of land sought to be acquired by the United States for the said Naval Supply Depot.

4. On November 27, 1939, the United States, acting by and through the Commandant of the Twelfth Naval District, and by a letter addressed to the Mayor of the City of Oakland, advised the said Mayor that the Navy Department was desirous of having work at the site of the new Fleet Supply Base actually under way in the early part of January, 1940; that the necessary legal steps for the transfer of the property to be used would be inaugurated shortly by the Judge Advocate General, Navy Department; but that it was likely that the transfer might not be completed by the time it was planned to commence construction work. Said letter continued as follows:

> "Information is requested, therefore, as to whether or not it would be agreeable to the City of Oakland to grant a permit to the Navy Department to commence the dredging and filling on the lands which are to be transferred by the City of Oakland to the United States for the Fleet Supply Base, prior to the time the actual transfer is made."

Pursuant to said request the Board of Port Commissioners of the City of Oakland on December 4, 1939, adopted its Resolution No. 5295 granting the request of the United States Navy Department for permission to commence dredging and filling on the site of the Naval Supply Depot prior to the execution of the said conveyance. Pursuant to the permission so granted by the City of Oakland, the United States entered upon said lands and commenced dredging and filling thereon preparatory to the construction thereon of said Fleet Supply Base.

5. By a letter dated December 13, 1939, the United States, acting by and through the Commandant of the Twelfth Naval District, advised the President of the Board of Port Commissioners of the City of Oakland that the Navy Department was

> "desirous of expediting the acquisition by the United States of the property to be conveyed by the City of Oakland for a Fleet Supply Base"

and, pursuant to directions of the Secretary of the Navy, requested said President of the Board of Port Commissioners to have prepared and furnish

> "the necessary deed of conveyance and also *an abstract of the title to the property to be conveyed. . . .*"

Said letter further stated:

> "Before Government funds can be expended on lands acquired by the United States, either by purchase or gift, title to the lands must be approved by the Attorney General."

6. On May 1, 1940, an attorney in the United States Department of Justice addressed a communication to the City of Oakland, stating that under federal procedure the

Navy Department could not let any of the contracts for the development of the Naval Supply Base until the Attorney General of the United States should first find the title to the land vested in the United States. Said communication further stated that:

> "Among the requirements made by the Attorney General of the United States to be observed by the Navy Department before he will find a valid title vested in the United States is the passage and adoption of an ordinance or resolution by the Board of Port Commissioners similar in form and content to the annexed draft.
>
> "The reason for this requirement is simply to preclude any question from arising regarding the reservation made by the State of California, as set out in the California Statutes of 1911, Chapter 657, page 1258, section (b). Under this reservation the State of California has the right to use any harbors or other improvements constructed by the City of Oakland or its successors on the tidelands so conveyed, for any vessel or railroad owned or operated by the State."

City Ordinance No. 669 (C. M. S.) and Port Ordinance No. 243 had theretofore been adopted by the City Council and by the Board of Port Commissioners, each Ordinance authorizing the conveyance to the United States of the tide and submerged lands desired by the United States for said Naval Supply Depot, but subject, among other things, to existing encumbrances (including franchise rights, if any). The draft of the ordinance annexed to and referred to in the aforesaid memorandum provided that the phrase "existing encumbrances", appearing in said

prior ordinances should not include any encumbrances which might exist by virtue of the reservations made by the State of California in the Act of the Legislature approved May 1, 1911 (Stats. 1911, p. 1258) by which the City of Oakland acquired title to said lands from the State of California. In compliance with the request contained in said memorandum, the City Council and the Board of Port Commissioners of the City of Oakland duly adopted ordinances substantially similar in form and content to the draft annexed to said memorandum, said ordinances being Ordinance No. 1129 C. M. S. adopted by said Council on May 16, 1940, and Port Ordinance No. 332 adopted by said Board on May 13, 1940.

7. Under date of May 16, 1940, the City of Oakland caused to be executed by its proper officers and delivered to the United States a certain deed by which said City of Oakland did

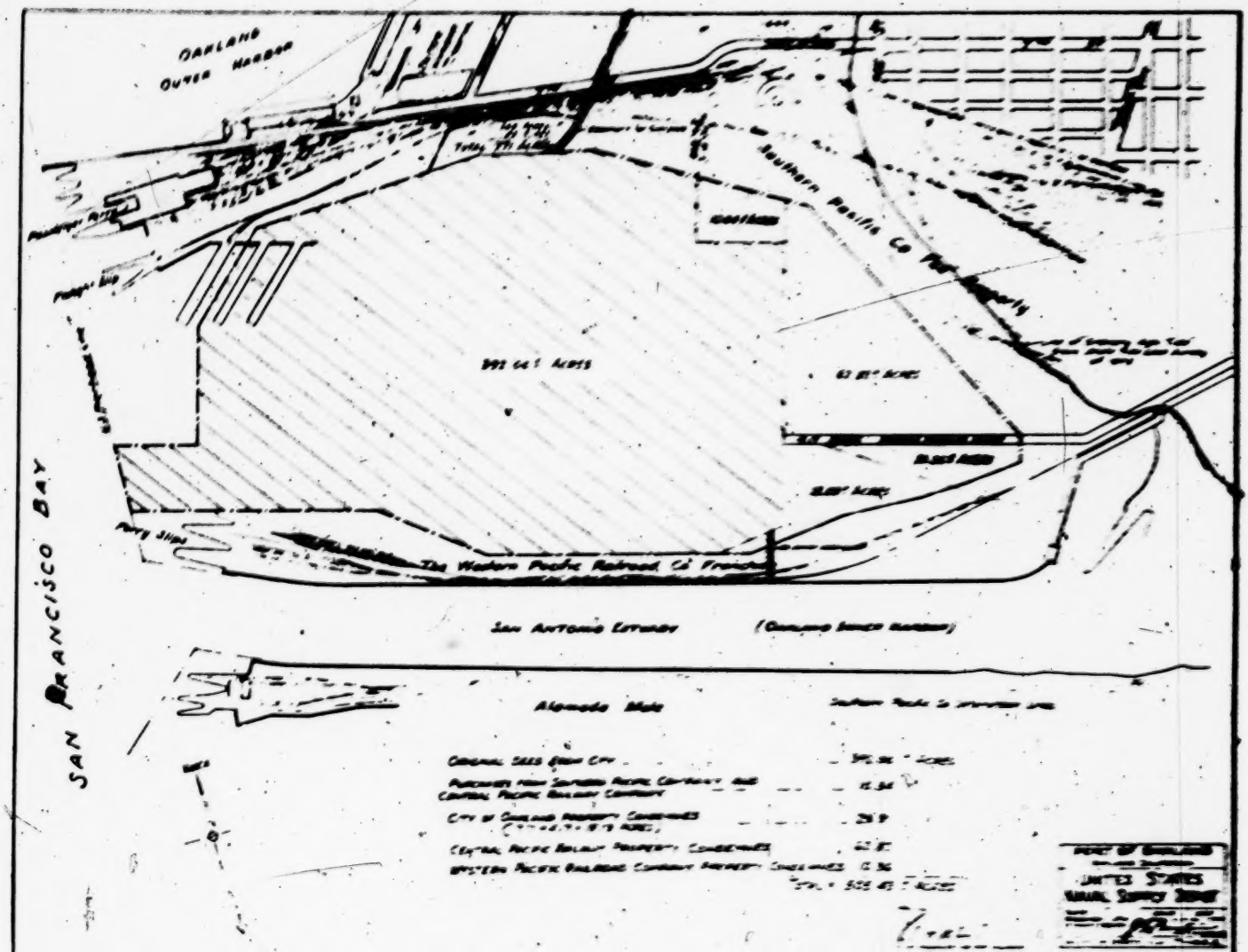
> "grant, give, convey and alien unto the United States of America, forever, all those certain tide and submerged lands situate, lying and being in the City of Oakland, County of Alameda, State of California,"

and more particularly described in said deed, containing 392 acres more or less. The habendum clause of said deed provided as follows:

> "To HAVE AND TO HOLD all and singular the said lands together with the appurtenances and privileges incident thereto unto United States of America forever as a site for a naval supply depot upon the con-

dition, nevertheless, that United States of America shall start the actual work of developing said naval supply depot at the earliest possible moment, and continue said work with diligence, and that not less than the sum of two million dollars ($2,000,000.00) shall be expended or contracted to be expended by the United States of America on said lands in the actual work of development of such Naval Supply Depot by December 31, 1942, otherwise the title to and right of possession of such lands shall revert automatically to the City of Oakland. Such grant is made on the further condition that if at any time in the future said lands shall be abandoned by the United States of America or shall cease substantially to be used for a naval supply depot, or for other naval or military purposes, or for such other public or governmental purpose to which the City of Oakland or its successors may agree from time to time hereafter, the title to and right of possession of such lands shall revert automatically to the City of Oakland. *It is the purpose of this latter condition to prevent the lying in idleness of the large and valuable part of the City's waterfront which the lands granted hereby constitute.* In the event of the breach of either of the above conditions, the City of Oakland shall have an immediate right of re-entry."

A map showing the property conveyed by the aforesaid deed as a hatched area, and also showing the "Line of 'Ordinary High Tide' from State Tide Land Survey of 1872," is hereinafter set forth as follows:


OAKLAND
OUTER HARBOR
SAN FRANCISCO BAY
Southern Pacific Co Port Property
The Western Pacific Railroad Co Property
SAN ANTONIO ESTUARY
Alameda Mole

8. In connection with the delivery of said deed the United States required the City of Oakland to execute and deliver to the United States a certificate stating, among other things, that the Board of Port Commissioners was the agency of the City of Oakland having control of and jurisdiction over all tide and submerged lands granted to said City by the State of California in trust for the promotion of commerce and navigation; that an examination of the minutes of the meetings of said Board since February 12, 1927 (the date of its creation) disclosed that said Board had taken no action affecting in any manner the title to the lands proposed to be conveyed to the United States for purposes of a Fleet Supply Base except only the ordinance authorizing conveyance of such lands to the United States for such purposes; and further:

> "*that said lands are tide and submerged lands; that they were granted to the City by the State of California* by virtue of the provisions of Statutes of 1911, Chapter 657, page 1258; that no portion of said tide or submerged lands proposed to be conveyed has been previously conveyed or encumbered in any manner by said Board of Port Commissioners, *that said City is seized of said lands in fee simple (see City of Long Beach v. Marshall,* 11 Cal. 2d 609*), and now possesses a good right to convey the same by virtue of* the provisions of Section 232 of the Charter of said City (Statutes of 1937, page 2631) and by virtue of the provisions of Statutes of 1913, page 437 and Statutes of 1929, page 1691."

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*It is to be noted that *City of Long Beach v. Marshall, supra,* involved tide and submerged lands of the State of California, lying in the Pacific Ocean and Bay of San Pedro, granted to the City of Long Beach as alleged in Paragraph B-II of this Appendix B; and that *said grant to the City of Long Beach extends out 3 miles into the Pacific Ocean.* The Court there held the City of Long Beach to be the owner in fee simple of the said tide and submerged lands, subject to the conditions contained in said granting statute.

9. Thereupon, and pursuant to the Act of Congress approved June 2, 1939, referred to in subparagraph 1 above, the United States accepted the said deed dated May 16, 1940, from the City of Oakland and caused the same to be recorded on May 17, 1940, in Liber 3869, Page 386, of Official Records of the County of Alameda, State of California. Thereafter the United States continued to occupy and improve the lands conveyed by said deed (having theretofore commenced dredging and filling on such lands pursuant to the permission granted by the said resolution of the Board of Port Commissioners on December 4, 1939.

10. On September 12, 1940, the United States, acting by and through the Chief of Staff, Twelfth Naval District, and by a letter addressed to the Port Manager of the Board of Port Commissioners of the City of Oakland, advised said Port Manager that, in connection with the construction then under way at the Naval Supply Depot referred to above, it would be necessary to provide sewer and drainage lines from the Supply Depot property to the San Antonio Estuary and that

> "the Commandant has been directed to take this matter up with the interested parties with a view to obtaining the necessary easements for this purpose."

It was further stated in said letter that a permit had been obtained from the Western Pacific Railroad Company but that:

> "In view of the fact, however, that the permit of the Railroad Company covers the use of land occupied by them under franchise from the City of Oakland, it is requested that a similar permit be issued *by the City of Oakland covering its rights in the property,* provided there is no objection to the granting of such a permit."

There was enclosed with said letter a blueprint showing the proposed location of the sewer and drainage lines for which said easement was requested. The lands sought to be subjected to said easement were and are tide and submerged lands lying below the line of ordinary high tide of San Francisco Bay as the same existed in 1850, and the title to said lands had been acquired by the City of Oakland from the State of California in the same manner and upon the same conditions as the title to the land conveyed to the United States by the deed referred to in subparagraph 7 above.

Pursuant to the request of the United States contained in said letter of September 12, 1940, the City of Oakland caused to be executed by its proper officials and delivered to the United States a deed dated November 14, 1940, whereby said City of Oakland did

> "grant, give, convey and alien unto the United States of America, forever, an easement for sewer and drainage purposes *across those certain tide and submerged lands in the Middle Harbor area of the City*"

and more particularly described in said deed, consisting of a strip of land thirty feet wide and extending from the southerly boundary of the land conveyed by the deed dated May 16, 1940, referred to in subparagraph 7 above, to the San Antonio Estuary. Said strip of land is indicated in black on the map hereinabove set forth in subparagraph 7. The habendum clause of said deed provided as follows:

> "TO HAVE AND TO HOLD unto the United States of America forever, upon condition, nevertheless, that in the event the title to the lands described in the deed above referred to [said deed dated May 16, 1940] shall revert to the City, all interest of the United States of America in the lands above particularly

described shall revert automatically to the City. Said grant is made on the further conditions that the use of the lands described herein shall be limited solely and exclusively to the purposes aforesaid; that any sewer or drainage lines constructed across such lands shall at all times be maintained by the United States of America in a safe manner and condition; that the United States of America shall not erect or place upon such lands any building or other structure without prior approval of the City, or otherwise unnecessarily interfere with the surface use thereof; that such easement shall be appurtenant to the lands described in the deed above referred to and that no assignment thereof shall be made without the prior written consent of the City.

"Said grant is made on the further condition that it shall not be construed as a relinquishment of the City of Oakland or the State of California of any political jurisdiction over such lands."

Thereupon the United States accepted said deed upon the conditions stated therein and proceeded to use and enjoy the easement thereby granted.

11. On June 16, 1941, the United States, acting by and through the Commandant of the Twelfth Naval District and by a letter addressed to the Mayor of the City of Oakland, advised said Mayor that the Navy Department had initiated action to provide an overpass entrance to the Naval Supply Depot from Maritime Street over Seventh Street and the Southern Pacific railroad tracks, as indicated upon a drawing enclosed with said letter. Said letter stated in part as follows:

"To expedite this matter, it would be appreciated if the City of Oakland would authorize the placing of the approach to this overpass for approximately

500 feet in Maritime Street and the crossing over Seventh Street on an extension of the center line of Maritime Street."

The lands on which it was sought to locate said overpass were and are tide and submerged lands lying below the line of ordinary high tide of San Francisco Bay as the same existed in 1850, and title to said lands was acquired by the City of Oakland from the State of California in the same manner and on the same conditions as the title to the land conveyed to the United States by the deed referred to in subparagraph 7 above.

Pursuant to the request of the United States contained in said letter of June 16, 1941, the City of Oakland caused to be executed by its proper officers and delivered to the United States a certain deed dated November 20, 1942, whereby said City did

"grant, give, convey and alien, unto the United States of America, forever, an easement for the purpose of constructing and maintaining a vehicular overpass, and its approaches, across those certain tide and submerged lands in the City lying between the site of the Naval Supply Depot and Maritime Street, including a portion of said street"

and more particularly described in said deed, consisting of a strip of land connecting with the northerly boundary of the land conveyed by the deed dated May 16, 1940, referred to in subparagraph 7 above. Said strip of land is indicated in black on the map hereinabove set forth in subparagraph 6. The habendum clause of said deed provided as follows:

"TO HAVE AND TO HOLD unto the United States of America forever, upon condition, nevertheless, that in

the event the title to the lands described in the deed above referred to [said deed dated May 16, 1940] shall revert to the City all interest of the United States of America in the lands above particularly described shall revert automatically to the City. Said grant is made on the further conditions that the use of the lands described herein shall be limited solely and exclusively to the purposes aforesaid; that any structure constructed upon such lands shall at all times be maintained by the United States of America in a safe manner and condition; that such easement shall be appurtenant to the lands described in the deed above referred to and that no assignment thereof shall be made without the prior written consent of the City; and that the easement granted for the construction and maintenance of said overhead walk and stairway is hereby restricted to the maintenance of an overhead structure so as not to interfere with the free passage of traffic underneath.

"The grant herein made shall include the right to construct and maintain footings for the structure hereby authorized extending a distance of twenty (20) feet on either side of the center line of the above described strip of land, but they shall be placed so that no part of them protrudes above the surface of the ground on that portion outside of the parcel of land above described.

"The grant herein made shall not be construed as a relinquishment by the City of Oakland or the State of California of any political jurisdiction over such lands."

Thereupon the United States accepted said deed granting an easement for a vehicular overpass, upon the conditions therein stated, and proceeded to construct said overpass and to use and enjoy the rights thereby granted.

(IV)

The Board of Port Commissioners of the City of Oakland has granted numerous leases to the United States, at its request, covering tide and submerged lands granted to the City of Oakland by the State of California, as aforesaid. Under each of said leases the United States, by and through the department or agency thereof named therein, has entered upon and occupied, used and enjoyed the particular portion of said lands specified and described therein and has paid to the City of Oakland, through said Board of Port Commissioners, the rentals stipulated in such lease. Among said leases covering tide and submerged lands, are the following:

1. Leases applied for and delivered to the Navy Department (each of which leases was executed on "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935"), as follows:

(a) Lease dated August 1, 1945, for the use of a portion of Ninth Avenue Pier in the City of Oakland for the period of 11 months at an annual rental of $140,000.

(b) Lease dated July 1, 1943 for the use of an unimproved water area containing 0.47 acres at the foot of Broadway in the City of Oakland, at an annual rental of $1.00, for a term beginning July 1, 1943 and ending June 30, 1944, said term being renewable at the option of the United States from year to year but not beyond six months after the termination of the war.

(c) Lease dated October 1, 1942 for the use of dry dock facilities located at the foot of Fifth Avenue in the City of Oakland containing approximately 2 acres, at an annual rental of $1.00, for a term beginning October 1, 1942 and ending September 30, 1947, renewable at the option of the

United States for successive five-year periods but not beyond September 30, 1957.

(d) Lease dated May 1, 1945 for the use of a covered area at the Ninth Avenue terminal in the City of Oakland containing approximately 15,000 square feet and of certain unimproved areas at said terminal containing approximately 3.40 acres, at an annual rental of $9,690.00, for a term beginning May 1, 1945 and ending June 30, 1946, renewable at the option of the United States from year to year but not beyond six months after the termination of the national emergency.

(e) Lease dated January 1, 1944 for the use of an improved ground area including a portion of the Ninth Avenue Pier in the City of Oakland and containing approximately 18 acres, at a monthly rental of $5,150.00, for a term commencing January 1, 1944 and ending June 30, 1944, renewable at the option of the United States from year to year but not beyond six months after the termination of the war.

(f) Lease dated August 1, 1943 for the use of approximately 54,400 square feet of the Frederick Street Wharf area in the City of Oakland, at a monthly rental of $630.00, for a term commencing August 1, 1943 and ending June 30, 1944, renewable at the option of the United States from year to year thereafter but not beyond six months after the termination of the war.

(g) Lease dated September 1, 1943 for the use of an unimproved area adjoining the Frederick Street Wharf in the City of Oakland, containing approximately 3.70 acres, at a monthly rental of $308.00, for a term commencing September 1, 1943, and ending June 30, 1944, renewable at the option of the United States from year to year

thereafter but not beyond six months after the termination of the war.

(h) Lease dated July 1, 1945 for the use of the former Municipal Garbage Wharf in the City of Oakland, containing approximately 2.30 acres, at a monthly rental of $250.00 for a term commencing July 1, 1945 and ending June 30, 1946, but renewable at the option of the United States from year to year thereafter but not beyond six months after the termination of the war.

2. Leases applied for and delivered to the War Department (each of which leases was executed on "U. S. Standard Form No. 2 (Revised) approved by the Secretary of the Treasury May 6, 1935"), as follows:

(a) Lease dated June 1, 1943, for the use of a parcel of reclaimed submerged lands below the line of ordinary low tide, containing 3.18 acres, in the Outer Harbor Area of the City of Oakland, for the term of one month but renewable at the option of the United States from year to year (but in no event beyond June 30, 1950), at a monthly rental of $229.17.

(b) Lease dated December 15, 1941 for the use of the Fourteenth Street Wharf and transit sheds in the City of Oakland, containing approximately 316,750 square feet, for a term commencing December 15, 1941 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1947 and in no event beyond six months after the termination of the war, at a monthly rental of $10,908.53 per month from December 15, 1941 to June 30, 1943 and at a monthly rental of $10,547.77 thereafter if renewed by the United States.

(c) Lease dated March 20, 1942 for the use of certain open wharf and rear ground areas in the Outer Harbor Terminal in the City of Oakland, containing approximately 253,350 square feet, at a monthly rental of $2,427.50, for a term commencing March 20, 1942 and ending January 30, 1942, renewable at the option of the United States from year to year thereafter, but not beyond June 30, 1947 and in no event beyond six months after the termination of the war.

(d) Lease dated May 1, 1942 for the use of a portion of the Seventh Street Wharf and transit shed in the City of Oakland, containing approximately 97,814 square feet, at a monthly rental of $3,257.20, for a term commencing May 1, 1942 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter, but not beyond June 30, 1947 and in no event beyond six months after the termination of the war.

(e) Lease dated January 1, 1942 for the use of an unimproved ground area in the Outer Harbor Terminal in the City of Oakland, containing approximately 11.44 acres, at a monthly rental of $400.00, for a term commencing January 1, 1942 and ending June 30, 1942, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1947 and in no event beyond six months after the termination of the war.

(f) Lease dated June 1, 1943 for the use of an improved ground area in the Outer Harbor Terminal in the City of Oakland, containing approximately 5.47 acres, at a monthly rental of $560.00, for a term commencing June 1, 1943 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1950.

(g) Lease dated July 8, 1941 for the use of certain warehouse space in Terminal Building "B", Outer Harbor Terminal, in the City of Oakland, containing approximately 108,601 square feet, at a monthly rental of $1,629.00, for a term commencing August 1, 1941 and ending June 30, 1942, renewable at the option of the United States for an additional year ending June 30, 1943.

(h) Lease dated July 1, 1942 for the use of an unimproved ground area in the Outer Harbor Terminal in the City of Oakland, containing approximately 32.03 acres, at a monthly rental of $1,581.25, for a term commencing July 1, 1942 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1947.

(i) Lease dated July 1, 1944 for the use of an unimproved ground area in the Outer Harbor Terminal in the City of Oakland, containing approximately 17.01 acres, at a monthly rental of $850.05, for a term commencing July 1, 1944 and ending June 30, 1945, renewable at the option of the United States from year to year thereafter but in no event beyond six months after the termination of the unlimited national emergency.

(j) Lease dated June 1, 1943 for a one-third interest in an oil pier in the Outer Harbor Terminal in the City of Oakland, containing approximately 31,500 square feet, at a monthly rental of $175.00 per month, for a term commencing June 1, 1943 and ending June 30, 1943, but renewable at the option of the United States from year to year thereafter but in no event beyond six months after the termination of the unlimited national emergency.

(k) Lease dated August 1, 1942 for the use of a ground area for storage tracks in the Middle Harbor of the City

of Oakland, containing approximately 20,400 square feet, at an annual rental of $1.00, for a term commencing August 1, 1942 and ending June 30, 1943, renewable at the option of the United States from year to year thereafter but not beyond June 30, 1950.

3. Lease dated July 1, 1944, applied for and delivered to the United States Maritime Commission for the use of a warehouse and certain ground storage space on reclaimed submerged lands at the foot of Webster Street in the City of Oakland, consisting of 106,280 square feet, for the term of one year (subject to cancellation by the lessee upon thirty days notice and by the lessor upon sixty days notice). Said lease was renewable from year to year at the option of the United States (but in no event extending beyond June 30, 1948). The monthly rental is $7380. Said lease was executed on "U. S. Standard Form No. 2 (Revised) Approved by the Secretary of the Treasury May 6, 1935".

(V)

The plaintiff United States of America has condemned parcels of tide and submerged lands, filled and unfilled, located within the boundaries of the City of Oakland and owned by the City of Oakland by virtue of said Legislative grants from the State of California, some of said condemnations being the following:

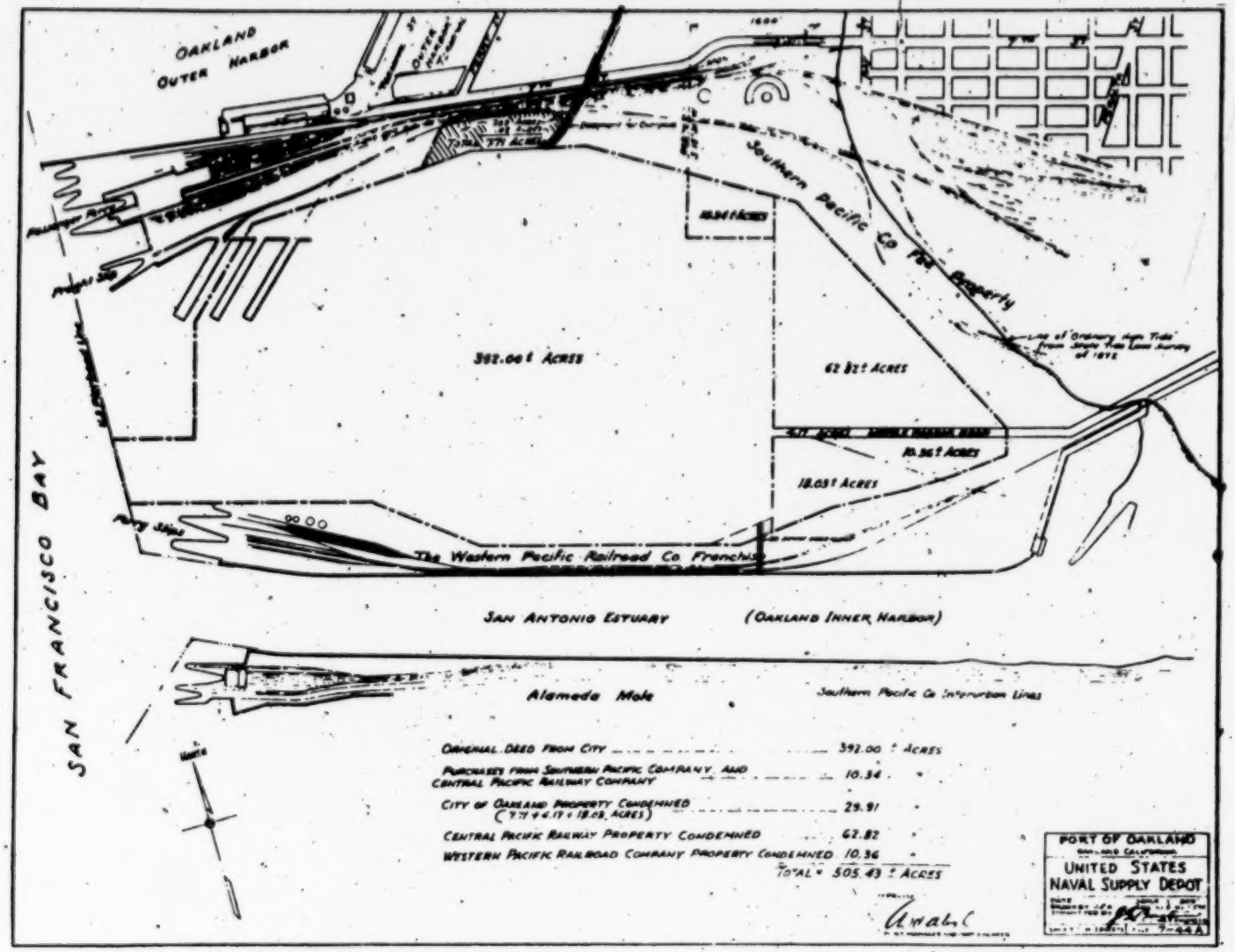
1. *United States v. 7.69 Acres of Land.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 7.69 Acres of Land, Oakland, Alameda County, California,* SOUTHERN PACIFIC COMPANY, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, *et al., Defendants,*" was com-

menced in the District Court of the United States for the Northern District of California, Southern Division (being case No. 22378-S in the files of said court) by the filing of a Complaint in Condemnation on November 20, 1942 to take the fee simple title in and to certain lands, comprising 7.69 acres, more or less, for use in connection with the construction of a Medical Supply Warehouse. Said lands consisted of a parcel of filled and reclaimed tide and submerged lands adjacent to the Naval Supply Depot parcel of tide and submerged lands conveyed by said City of Oakland to the United States by the deed dated May 16, 1940, above mentioned. In said complaint the United States alleged that:

> "The apparent and purported owner of said above described lands is Southern Pacific Company."

A map showing said lands as a hatched area, and also showing the "Line of 'Ordinary High Tide' from State Tide Land Survey of 1872", is hereinafter set forth as follows:


OAKLAND
OUTER HARBOR
Southern Pacific Co Pier Property
392.00 ± ACRES
62.82± ACRES
10.36± ACRES
18.03± ACRES
The Western Pacific Railroad Co. Franchise
SAN FRANCISCO BAY
SAN ANTONIO ESTUARY
(OAKLAND INNER HARBOR)
Alameda Mole
Southern Pacific Co Interurban Lines
ORIGINAL DEED FROM CITY ..... 392.00 ± ACRES
PURCHASES FROM SOUTHERN PACIFIC COMPANY AND CENTRAL PACIFIC RAILWAY COMPANY ..... 10.34 "
CITY OF OAKLAND PROPERTY CONDEMNED (7.77 + 4.17 + 18.03 ACRES) ..... 29.91 "
CENTRAL PACIFIC RAILWAY PROPERTY CONDEMNED ..... 62.82 "
WESTERN PACIFIC RAILROAD COMPANY PROPERTY CONDEMNED ..... 10.36 "
TOTAL = 505.43 ± ACRES
PORT OF OAKLAND
UNITED STATES
NAVAL SUPPLY DEPOT
P-44A

(b) Upon the filing of said complaint and on November 20, 1942, an Order for Immediate Possession was entered and made by said court and was filed in said action; and pursuant thereto the United States entered upon and took possession of said lands.

(c) On November 23, 1943, the United States filed in said action a Declaration of Taking, executed by James Forrestal, Acting Secretary of the Navy, on July 27, 1943, in which it was stated that the sum estimated as just compensation for the taking of said property was $157,880.00, which sum was deposited in the registry of the court for the use and benefit of the persons entitled thereto, and in which Declaration of Taking it was further stated that:

> *"The purported owners of the lands are the City of Oakland and the Southern Pacific Company."*

On said date of November 23, 1943, there was entered and filed in said action by the aforesaid court a Judgment on said Declaration of Taking, whereby it was ordered, adjudged and decreed that the said lands vested in the United States in fee simple upon the filing of said Declaration of Taking and the deposit in the registry of the court of said sum of $157,880.00.

(d) Thereafter and on January 3, 1944, there was filed in said action a "Stipulation For Final Judgment And Order Directing The Payment Of Money," executed under date of December 20, 1943, by the United States, the City of Oakland and the Southern Pacific Company. Said stipulation pro-

vided that the defendants City of Oakland and Southern Pacific Company consented that a final judgment might be entered in said action condemning the land described in said Declaration of Taking, awarding said defendants the sum of $157,880.00 as full, adequate and just compensation for the taking of said land, and directing that said sum be paid to a designated agent who should divide said sum between said City of Oakland and said Southern Pacific Company as therein provided. Said stipulation contained the following provision:

> "Defendants warrant that at the time of the filing of the Complaint in this action *they were, and ever since have been and now are, the owners of all the right, title and interest in and to the property* described in said Declaration of Taking, and entitled to all of the compensation for the taking and use thereof; . . ."

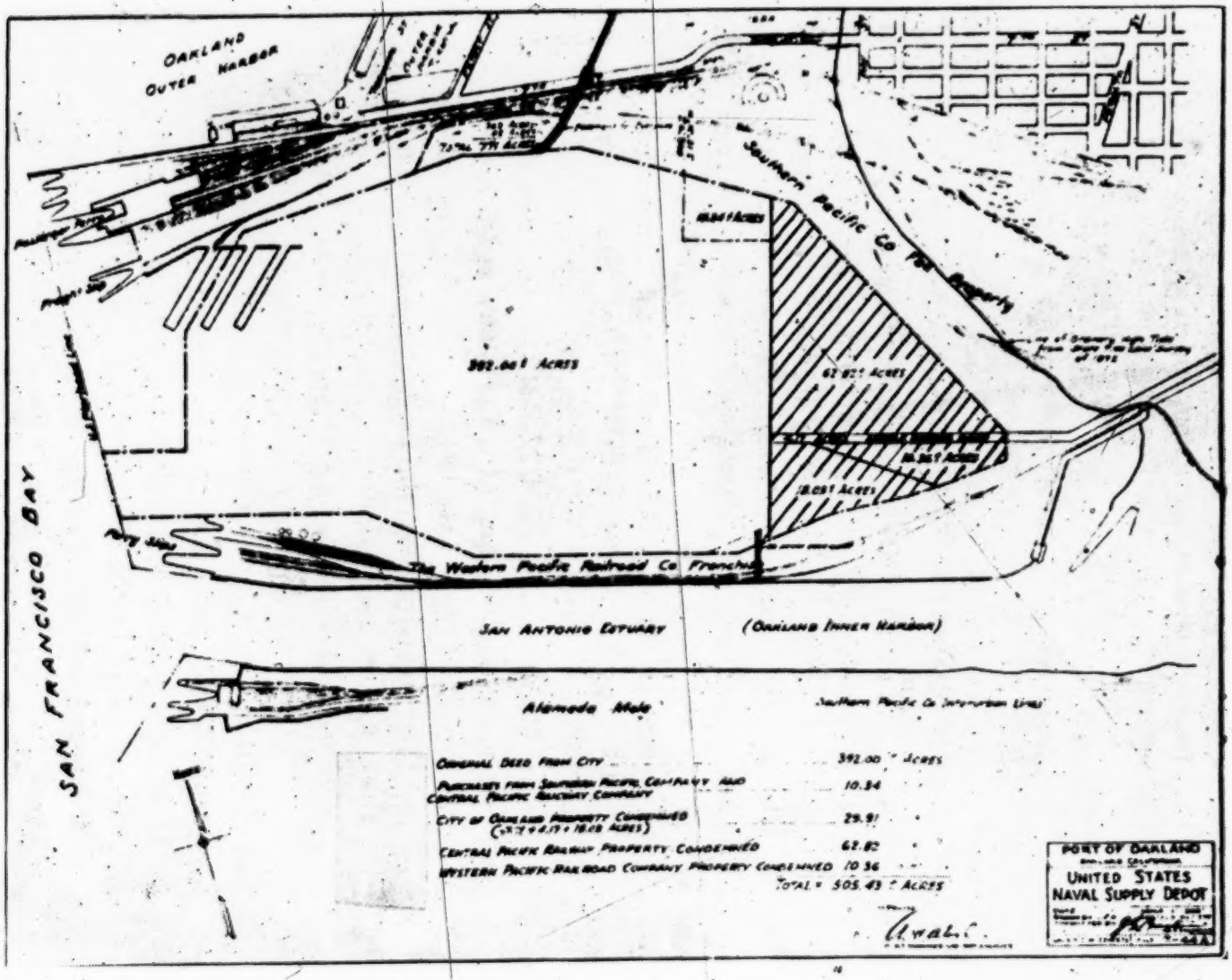
(f) On January 29, 1944, there was entered and filed in said action by the above mentioned court a "Final Judgment Of Condemnation Awarding The Sum Of $157,880.00 As Compensation For The Taking Of The Land Subject Of This Action." Paragraph IV of the findings of the court embodied in said final judgment (which findings were prepared, pursuant to the court's order, by the Special Assistant to the Attorney General representing the United States of America in said action) contained the following finding by said court:

> *"That the defendants City of Oakland, a municipal corporation, and Southern Pacific Company were the owners of the hereinafter*

described property at the time of the filing of the Complaint in this action, and at all times subsequent thereto, including the time of the filing of the Declaration of Taking on the 22nd day of November, 1943, and entitled to all the compensation to be paid for the taking thereof; . . ."

2. *United States v. 87.66 Acres.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 87.66 Acres of land in the City of Oakland, Alameda County, California,* SOUTHERN PACIFIC COMPANY, WESTERN PACIFIC RAILROAD COMPANY, PORT OF OAKLAND AUTHORITY, CITY OF OAKLAND, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, *et al., Defendants,*" was commenced in the District Court of the United States for the Northern District of California, Southern Division (being case No. 22298-R in the files of said court) by the filing of a Complaint in Condemnation on September 11, 1942, to take the fee simple title in and to certain lands, comprising 87.66 acres, for the establishment of facilities to be used in connection with the Naval Supply Depot. Said lands constituted a parcel of tide and submerged lands located in said City of Oakland and adjacent to the parcel of tide and submerged lands conveyed by the City of Oakland to the United States for a Naval Supply Depot by the deed dated May 16, 1940, above mentioned. A map showing said lands as a hatched area, and also showing the "Line of 'Ordinary High Tide' from State Tide Land Survey of 1872", is hereinafter set forth as follows:


OAKLAND
OUTER HARBOR
Southern Pacific Co R/W Property
392.661 ACRES
62.82± ACRES
10.34± ACRES
29.91± ACRES
The Western Pacific Railroad Co Franchise
SAN FRANCISCO BAY
SAN ANTONIO ESTUARY
(OAKLAND INNER HARBOR)
Alameda Mole
Southern Pacific Co Interurban Line
ORIGINAL DEED FROM CITY ... 392.00 ± ACRES
PURCHASES FROM SOUTHERN PACIFIC COMPANY AND CENTRAL PACIFIC RAILWAY COMPANY ... 10.34 "
CITY OF OAKLAND PROPERTY CONDEMNED (29.91 + 0.17 = 30.08 ACRES) ... 29.91 "
CENTRAL PACIFIC RAILWAY PROPERTY CONDEMNED ... 62.82 "
WESTERN PACIFIC RAILROAD COMPANY PROPERTY CONDEMNED ... 10.34 "
TOTAL = 505.43 ± ACRES
PORT OF OAKLAND
UNITED STATES
NAVAL SUPPLY DEPOT

In said complaint it was further alleged by the United States as follows:

> *"That the apparent and purported owners of the above described property are* as follows: Southern Pacific Company, *City of Oakland,* Western Pacific Railroad Company *and Port of Oakland Authority."*

On said date of September 11, 1942, an Order for Immediate Possession of the lands sought to be condemned was entered by said court and filed in said action; and pursuant to said order, the United States entered upon and took possession of said parcel of lands.

(b). On April 12, 1943, an Amendment and Supplement to Complaint was filed by the United States in said action in which it was alleged by the United States as follows:

> "That the above described property may be subdivided into parcels and that the apparent and purported owners of said parcels are as follows:

Parcel	Owner	Acres
K	Southern Pacific Co. and/or Central Pacific Railway Co.	62.82
H	Western Pacific Railroad Co.	7.32
G	*City of Oakland*	*11.96*
F	*City of Oakland*	*1.39*
2	Middle Harbor Road, 80 feet wide	4.17
H-A	Western Pacific Railroad	3.06
G-A	*City of Oakland*	*2.61*
F-A	*City of Oakland*	*6.15"*

(c) On April 12, 1943, the United States filed in said action a Declaration of Taking, executed by James Forrestal, Acting Secretary of the Navy, on March 10, 1943, in which it was stated that the sum of $375,751.00 was deposited into the registry of the court as the sum estimated to be just compensation for all the lands, improvements and appurtenances thereby taken, and Judgment thereon was entered on April 12, 1943, vesting the award of just compensation in the persons listed in the last subparagraph hereof. Thereafter, the United States caused said Judgment to be recorded in Liber 4346, Page 461, Official Records of Alameda County.

(d) Thereafter and in the month of December, 1945, a certain "Stipulation For Final Judgment As To Parcels G, G-A, 2, F, F-A, H and H-A" was duly executed by and between the United States, the City of Oakland and The Western Pacific Railroad Company, in which the defendant City of Oakland agreed to accept the sum of $102,371.00 as full, adequate and just compensation for the taking of Parcels G, G-A and 2, comprising 18.29 acres. Said stipulation contained the following provision:

> "*Defendants warrant that* at the time of and immediately prior to the taking of said interest by the plaintiff, *they were the owners* of said Parcels G, G-A, 2, F, F-A, H and H-A, and the only persons, firms or corporations entitled to any of the compensation for the taking of said Parcels G, G-A, 2, F, F-A, H and H-A."

3. *United States v. 72 Acres.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 72 Acres of Land, more or less, situate in the City of Oakland, County of Alameda, State of California,* THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, THE COUNTY OF ALAMEDA, THE STATE OF CALIFORNIA, *et al., Defendants,*" was commenced in the District Court of the United States for the Northern District of California, Southern Division (being case No. 21758-S in the files of said court), by the filing of a Complaint in Condemnation on January 15, 1941 to take the fee simple title (subject to existing public roads, rights of way and public utilities) in and to certain lands, comprising 72 acres, more or less, required and necessary for military purposes of the United States. In said complaint the United States further alleged as follows:

> *"That the defendant, City of Oakland,* a municipal corporation and a political subdivision of the State of California, *is the apparent and purported owner* of said tract of land, hereinbefore described."

The United States further alleged in said complaint as follows:

> "That under and by virtue of the provisions of the Acts of the Legislature of the State of California (Stats. 1911, p. 1258, and Stats. 1917, p. 63), and Acts amendatory thereof, all of the right, title and interest of the defendant, State of California, to all or a portion of the land hereinbefore described was granted to the de-

fendant, City of Oakland, and its successors, in trust for the uses and purposes expressed in said Acts; that the defendant, State of California, may have or claim some interest in said land under and by virtue of the provisions of said Acts of the Legislature of the State of California."

Annexed to said complaint as Exhibit "A" was a map or plat of the property described in said complaint and sought to be taken, showing all the property sought to be condemned in said action as lying below the "Agreed low tide line of 1852." A copy of said map is hereinafter set forth as follows:

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WHARF
STREET
UNIT
WHARF
ST
NORTH
INDUSTRIAL
AREA
Maritime
St

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(b) On January 15, 1941, the United States filed a Declaration of Taking, executed by Henry L. Stimson, Secretary of War, stating in part that:

> "Purported owner: City of Oakland, California; Estimated Value: $2,168,000."

(c) On January 15, 1941, a Judgment on said Declaration of Taking was entered by and filed in said court, by which it was adjudged, ordered and decreed that the title to that certain tract or parcel of land comprising approximately 72 acres, more or less, and described in said complaint and in said Declaration of Taking, in fee simple absolute, subject to existing public roads, rights of way and public utilities, vested in the United States upon the filing of said Declaration of Taking and the deposit in the registry of said court of the said sum of $2,168,000, and the right to just compensation for the property taken vested in the persons entitled thereto.

4. *United States v. 13.6203 Acres.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 13.6203 Acres of Land, more or less, situate in the County of Alameda, State of California,* THE CITY OF OAKLAND, A MUNICIPAL CORPORATION, COUNTY OF ALAMEDA, STATE OF CALIFORNIA, *et al., Defendants,*" was instituted in the District Court of the United States for the Northern District of California, Southern Division (being case No. 21939-S in the files of said court) by the filing by the United States of a Complaint in Condemnation on August 11, 1941, to condemn the full use and enjoyment for a term

of five years of approximately 13.6203 acres of land, being a portion of the "Outer Harbor and North Industrial Area of Oakland, California," and more particularly described therein. All the lands described constituted tide and submerged lands lying below the line of ordinary high tide of San Francisco Bay. The United States further alleged in said complaint:

> "That the defendant *City of Oakland is the apparent and purported owner* of said tract of land above described."

(b) On August 10, 1941, the United States caused to be filed in said action a Declaration of Taking, executed by Henry L. Stimson, Secretary of War, stating in part that:

> "Name of Purported Owner: City of Oakland: Estimated Compensation: $27,240.00."

A Judgment on said Declaration of Taking was thereupon entered by said court.

(c) Under date of September 22, 1941, a certain

> "Stipulation For Entry Of Judgment Awarding The Sum Of $27,240.00 As Compensation For The Taking Of The Land Described In The Declaration Of Taking For A Period Of Five Years"

was made and entered into by and between the United States and the City of Oakland whereby it was stipulated that said court enter a final judgment that the sum of $27,240.00 was full, adequate and just compensation for the taking of the full use and enjoyment of said property for a period of five years com-

mencing July 1, 1941. Said stipulation further provided that

> "the defendant *City of Oakland,* a municipal corporation, represents and *warrants that* at the time of and immediately preceding the filing of the Declaration of Taking in this action *it was the owner of the property* above referred to and the only person, firm or corporation entitled to any of the compensation to be paid for said taking, . . ."

Pursuant thereto, a final Judgment was entered thereon, finding in part as follows:

> "That the Defendant *City of Oakland,* a municipal corporation, *was the owner in fee simple* of the land described in the Complaint and Declaration of Taking filed herein, at the time of and immediately prior to the filing of the above mentioned Declaration of Taking and the one entitled to receive the compensation for said taking; . . ."

Pursuant to said Final Judgment the United States paid said sum of $27,240.00 to said City of Oakland.

(d) A certain stipulation for judgment by and between the plaintiff United States of America and the defendant State of California in the aforesaid action was executed on October 6, 1941, and filed in the above mentioned court on October 9, 1941. Said stipulation contained the following provisions:

> "It is stipulated by and between the plaintiff above named and the defendant State of California that the legal effect of the condemnation action brought by the plaintiff is to compel the

City of Oakland (without its consent and against its will) to lease the property described in the complaint herein to said plaintiff for a period of five (5) years commencing July 1, 1941;

"It is further stipulated that said defendant *State of California has heretofore granted in trust to the defendant, City of Oakland*, a municipal corporation, *all of the tide and submerged lands within its corporate boundaries* and that the parcel of land described in said complaint *constitutes a part of said tide and submerged land*; that as said grantee said defendant, City of Oakland, is legally entitled to receive any money recoverable or to be paid by the condemnor for the limited use and occupation of said property sought by said condemnor and that the property rights of the defendant State of California will not be affected by such limited use and occupancy of said premises;

"It is therefore stipulated that judgment may be entered for plaintiff and against this defendant, the State of California, that the plaintiff shall have the exclusive use and control of said described property for a period of five (5) years commencing July 1, 1941, without paying any compensation to the State of California;

"It is further stipulated that no money, cost, or other judgment shall be entered herein against said defendant, State of California."

5. *United States v. Certain Land in the City of Oakland.*

(a) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. Certain Land in the City of Oakland, Alameda County, California, etc.*, CITY OF OAKLAND,

COUNTY OF ALAMEDA, STATE OF CALIFORNIA, *et al., Defendants,*" was commenced in the District Court of the United States, in and for the Northern District of California, Southern Division (being case No. 22400-R in the files of said court) by the filing by the United States of a Complaint in Condemnation on December 10, 1942 to take the exclusive use of the land therein described for a period of one year, with the right to renew from year to year for the duration of the war emergency, as determined by the President, and three years thereafter, and with the right of the United States to remove all improvements constructed or placed thereon at the termination of such use. All the lands described in said complaint constituted filled tide and submerged lands, conveyed to said City of Oakland by the State of California. Said lands had been selected for use in connection with defense housing. It was further alleged by the United States in said complaint as follows:

"That the *apparent and purported owners* of the property are as follows:

Parcel No.	Owner
1	State of California
	* * *
4	State of California
	* * *
8	State of California
	* * *
11	*City of Oakland*
	* * *

13 *City of Oakland* .

* * *

15 *City of Oakland*"

On said date of December 10, 1942, an Order for Immediate Possession was entered and made by said court and filed in said action, whereby the United States entered upon and took possession of said land.

(b) On April 12, 1943, the United States caused to be filed in said court a Declaration of Taking, reading in part as follows;

> "Those tracts of land in the City of Oakland, County of Alameda, State of California, and more particularly described as follows, the names of the purported owners thereof and the sums of money estimated by me to be just compensation for the exclusive use thereof for one year also being hereinafter set forth:"

Thereafter the fifteen parcels listed in the aforesaid Complaint were listed and described in said Schedule A, and opposite the number of each parcel said parcel was stated to be the property of the respective owners thereof as listed in said Complaint referred to in subparagraph (a) above.

A Judgment on said Declaration of Taking was entered in said court and filed in said action on April 12, 1943.

(c) On August 16, 1943, the United States and the City of Oakland stipulated, among other things, that

> "the undersigned Defendant represents and *warrants that* at the time of and immediately preced-

> ing the filing of the Declaration of Taking in this action, *it was the owner in fee simple* of the above mentioned property and the only persons, firms or corporations, entitled to the compensation to be awarded for said taking, or any portion thereof."

Pursuant to said stipulation on October 19, 1943, a Final Judgment in condemnation was entered by and filed in said court awarding the sum of $2620.54 to the City of Oakland as compensation for the taking of the exclusive use of Parcels Nos. 13 and 15 for one year, said Judgment finding in part as follows:

> "That the City of Oakland, a municipal corporation, is the owner of the property hereinafter described, and entitled to receive the compensation for said taking; . . ."

In accordance with said Final Judgment, the United States paid said sum of $2620.54 to said City of Oakland.

(d) The United States and the City of Oakland entered into a further stipulation as to Parcel No. 11, pursuant to which judgment was authorized condemning a leasehold therein at an annual rental of $1625.00.

Said stipulation further provided that

> "the undersigned Defendant represents and *warrants that* at the time of and immediately preceding the filing of the Declaration of Taking in this action, *it was the owner in fee simple* of the above mentioned property, and the only persons, firms or corporation, entitled to the compensa-

tion to be awarded for said taking, or any portion thereof."

On October 19, 1943, a Final Judgment in condemnation was entered pursuant to said stipulation finding in part as follows:

> "That CITY OF OAKLAND, a municipal corporation, *was the owner in fee simple* of the property hereinafter described, and entitled to receive the compensation for said taking; . . ."

In accordance with said Final Judgment, the United States paid said sum of $1625.00 to said City of Oakland.

(e) On November 30, 1943, and again on November 22, 1944, and on November 16, 1945, the United States caused to be filed in said action a "Notice of Election to Extend Term Condemned" reading in part as follows:

> "Comes now the plaintiff, United States of America, by M. Mitchell Bourquin, Special Assistant to the Attorney General, at the direction and under the authority of the Attorney General of the United States, and pursuant to the request of the Commissioner of the Federal Public Housing Authority, gives notice that the Commissioner of the Federal Public Housing Authority has elected to extend the term condemned in the above entitled cause, for an additional year ending December 10, 1944." [Said term being extended to December 10, 1946 by said subsequent notices.]

(f) A final judgment in condemnation was, pursuant to stipulation, entered by and filed in said court in

said action on October 19, 1943, awarding the sum of $1289.23 to the State of California, as the owner of Parcels Nos. 1; 4 and 8, as compensation for the taking of the exclusive use of said parcels for the period of one year. In accordance with said judgment the United States paid said sum to the State of California as compensation for the exclusive use of said Parcels Nos. 1, 4 and 8 for the term of one year mentioned in said complaint, and a like sum for each of the years for which the term condemned has been extended, as set forth above in subparagraph (e).

IX.

Board of State Harbor Commissioners for San Francisco Harbor.

During the period from 1863 to the present time the water front of the City and County of San Francisco has been and is now held for and on behalf of defendant State of California by the Board of State Harbor Commissioners for San Francisco Harbor, which was created by an Act of the Legislature of the State of California approved April 24, 1863 (Stats. 1863, p. 406).

(I)

Among other acts and transactions of the United States whereby it has acquiesced in and recognized such title and ownership are its application for, acceptance, use and enjoyment of, and payment of rental under, many revocable lease permits and leases of portions of the tide and submerged lands and the structures and improvements thereon along the waterfront of the City and County of San Francisco. Under and by each of said lease permits said Board of State Harbor Commissioners for San Francisco Harbor, or one of its predecessor boards in office, acting for and on behalf of defendant State of California, has assigned to the United States, acting through a department or agency thereof, the occupancy and use of a portion of said lands and the structures and other improvements located thereon. The United States is required to pay a stipulated rental therefor under each of said lease permits. The United States has entered upon and occupied, used and enjoyed the particular portion of

said lands specified and described therein. Among said leases and revocable lease permits are the following:

1. Revocable lease permits applied for, assigned and delivered to plaintiff United States of America, acting by and through the Navy Department, and under which plaintiff has entered upon and used the lands and structures, or parts thereof, and improvements mentioned and described therein, are as follows:

(i) REVOCABLE LEASE PERMIT DATED JUNE 5, 1941. For the use of Pier 14 for one year from July 1, 1941, with option to renew to June, 1946, at an annual rental of $1464.00.

(ii) REVOCABLE LEASE PERMIT DATED MAY 1, 1942. For the use of wharf and berthing space on Pier 48A at a monthly rental of $7275.90 from May 1, 1942, to June 30, 1943, with option to renew.

(iii) REVOCABLE LEASE PERMIT DATED DECEMBER 12, 1941. For the use of all of Pier 48B from December 12, 1941, to June 30, 1942, with option to renew to June 30, 1943, at a monthly rental of $7999.67, renewed to June 30, 1943.

(iv) REVOCABLE LEASE PERMIT DATED DECEMBER 12, 1941. For the use of all of Pier 50 A and B, from December 12, 1941, to June 30, 1942, with option to renew to June 30, 1943, at monthly rental of $9,019.21 for December, 1941, and $13,979.97 thereafter.

(v) REVOCABLE LEASE PERMIT DATED MARCH 26, 1941. For the use of all of Pier 54, annex and wharf from April 16, 1941, to June 30, 1941, with option to renew to June 30, 1942, at a monthly rental of $3812.51 for April, 1941, and $8377.35 thereafter; renewed to June 30, 1942.

(vi) REVOCABLE LEASE PERMIT DATED NOVEMBER 25, 1940. For the use of Pier 56 with joint use of depressed railroad tracks and elevated railway from December 1, 1940, to June 30, 1941, with option to renew to June 30, 1942, at a rental of $7499.34 for December, 1940, and a monthly rental of $7794.44 thereafter, renewed to June 30, 1942.

(vii) REVOCABLE LEASE PERMIT DATED JULY 1, 1941. For the use of Rooms 5 to 10, inclusive, on the second floor of the Ferry Building by the Cadet Selection Board of the Navy Department from July 1, 1941, to June 30, 1942, with an option to renew to June 30, 1946, at an annual rental of $3576.00.

(viii) REVOCABLE LEASE PERMIT DATED MARCH 15, 1942. For the use of mezzanine floor offices in the Ferry Building by the Naval Aviation Cadet Selective Board from March 15, 1942, to June 30, 1943, with option to renew to June, 1946, at an annual rental of $5443.00.

(ix) REVOCABLE LEASE PERMIT DATED APRIL 13, 1942. For the use of office on the second floor of the Ferry Building, Slip No. 4 and parking space at Facility 276 for official cars from April 15, 1942, to June 30, 1943, with option to renew to June, 1946, at a monthly rental of $883.00.

(x) REVOCABLE LEASE PERMIT DATED JULY 1, 1942. For the use of wharf and berth between Piers 9 and 15 from July 1, 1942, to June 30, 1943, with option to renew to June 30, 1947, at a monthly rental of $100.00.

(xi) REVOCABLE LEASE PERMIT DATED APRIL 1, 1942. For the use of space in bulkhead building at Pier 27 from April 1, 1942, to June 30, 1943, with option to renew to June 30, 1944, at an annual rental of $137.04.

(xii) REVOCABLE LEASE PERMIT DATED FEBRUARY 1, 1942. For the use of finger pier at the foot of Hyde Street from February 1, 1942, to June 30, 1943, at an annual rental of $4320.00.

(xiii) REVOCABLE LEASE PERMIT DATED JULY 3, 1942. For the use of all of Facility 156, State Refrigeration Terminal, with machinery in the plant, etc., from June 8, 1942, to June 30, 1943, at a rental for June, 1942 of $5115.56, and a monthly rental of $6672.48 thereafter, with an additional amount of $275.00 per month for twelve months from June, 1942 for wire fence and wages of employees.

(xiv) REVOCABLE LEASE PERMIT DATED JULY 1, 1942. For the use of the first floor exit from Slips 2 and 3, and part of space on first floor north of main exit of Ferry Building, from July 1, 1942, to June 30, 1943, with option to renew to June, 1946, at a monthly rental of $408.70.

(xv) REVOCABLE LEASE PERMIT DATED MAY 1, 1942. For the use of apron and road way space at Piers 31 and 33 from March 11, 1942, to June 30, 1943, with option to renew to June 30, 1950, at a monthly rental of $1191.15 per month.

2. Revocable lease permits applied for and assigned and delivered to plaintiff United States of America, acting by and through the Quartermaster Corps of the United States Army, and under which plaintiff, by and through said agency, has entered upon and used the lands and structures, or parts thereof, and improvements mentioned and described therein, as follows:

(i) REVOCABLE LEASE PERMIT DATED AUGUST 29, 1941. For the use of all of Pier 20 from September 1, 1941, on a month to month basis with option to renew to June 30, 1946, at a monthly rental of $5,447.68.

(ii) Revocable Lease Permit Dated August 29, 1941. For the use of all of Pier 24 from September 1, 1941, on a month to month basis with option to renew to June 30, 1946, at a monthly rental of $7,020.12.

(iii) Revocable Lease Permit Dated July 31, 1941. For the use of all of Sheds A and B, space between sheds, and apron wharf of Wharf 90 from August 1, 1941, on a month to month basis at a monthly rental of $16,056.60.

(iv) Revocable Lease Permit Dated February 17, 1941. For the use of all of Pier 7 from February 17, 1941, to June 30, 1941, with an option to renew to June 1946, at a rental of $3740.49 for period from February 17, 1941, to February 28, 1941, and $34,348.24 for period from March 1, 1941, to June 30, 1941.

(v) Revocable Lease Permit Dated December 24, 1940. For the use of all of Pier 17 from December 24, 1940, to June 30, 1941, with option to renew to June 30, 1946, with rental at $1820.40 from December 24, 1940 to December 31, 1940, and at a monthly rental of $7418.80 thereafter.

(vi) Revocable Lease Permit Dated January 19, 1942. For the use of all of Pier 37 from January 19, 1942, to June 30, 1942, with option to renew to June 30, 1947, at a rental of $6511.83 for the period from January 19, 1942, to January 31, 1942, and at a monthly rental of $15,528.22 thereafter.

(vii) Revocable Lease Permit Dated January 8, 1942. For the use of all of Pier 39 from January 8, 1942, to June 30, 1942, with option to renew to June 30, 1947, at a rent of $7723.14 from January 8, 1942, to January 31, 1942, and at a monthly rental of $9975.73 thereafter.

(viii) Revocable Lease Permit Dated January 23, 1942. For the use of all of Pier 41 from January 23, 1942, to June 30, 1942, with option to renew to June 30, 1947, at a rental of $422.00 from January 23, 1942, to January 31, 1942, and at a monthly rental of $14,506.70 thereafter.

3. Revocable lease permits applied for and assigned and delivered United States of America, acting by and through the Secretary of Agriculture, and under which plaintiff, by and through said department, has entered upon and used the lands and structures, or parts thereof, and improvements mentioned and described therein, as follows:

(i) Revocable Lease Permit Dated June 16, 1942. For the use of six rooms in the Ferry Building from July 1, 1942, to June 30, 1943, at a monthly rental of $178.60.

(ii) Revocable Lease Permit Dated June 8, 1942. For the use of two rooms in State Agriculture Building on Embarcadero from July 1, 1942, to June 30, 1943, at a monthly rental of $40.00.

(iii) Revocable Lease Permit Dated February 12, 1942. For the use of Room No. 5, State Agriculture Building on Embarcadero, from February 1, 1942 for one year at an annual rental of $300.00.

(iv) Revocable Lease Permit Dated June 1, 1942. For the use of Room No. 2, State Agriculture Building on Embarcardero, from June 1, 1942, to June 30, 1943, at an annual rent of $300.00.

(v) Revocable Lease Permit Dated August 11, 1942. For the use of Room 8 and part of Room 5, State Agriculture Building on Embarcardero, from July 1, 1942, to June 30, 1943, at an annual rental of $660.00; renewed by notice dated May 28, 1943, for

term beginning July 1, 1943, and ending June 30, 1944, renewed by notice dated May 20, 1944, for term beginning July 1, 1944, and ending June 30, 1945; renewed by notice dated May 31, 1945, for term beginning July 1, 1945, and ending June 30, 1946.

4. Revocable lease permits applied for and assigned and delivered to plaintiff United States of America, acting by and through the United States Coast Guard, and under which plaintiff, by and through said agency, has entered upon and used the lands and structures, or parts thereof, and improvements mentioned and described therein, as follows:

(i) Revocable Lease Permit Dated May 7, 1942. For the use of space for a float between Piers 20 and 22 from March 7, 1942, to June 30, 1942, with option to renew to June 30, 1945, at a monthly rental of $25.00.

(ii) Revocable Lease Permit Dated June 13, 1941. For the use of a berth at Pier 5 and wharf space from July 1, 1941, to June 30, 1942, with option to renew to June 30, 1944, at a monthly rental of $100.00.

(iii) Revocable Lease Permit Dated February 7, 1942. For the use of four rooms, two closets and hallway in the Barge Building at Fishermen's Wharf from December 19, 1941, to June 30, 1942, with option to renew to June 30, 1943 at an annual rental of $615.60.

(iv) Revocable Lease Permit Dated July 15, 1942. For the use of berthing space at Piers 43 and 43½ and storage space on Pier 43, from July 1, 1942, to June 30, 1943, at an annual rental of $1800.00.

(v) REVOCABLE LEASE PERMIT DATED JUNE 4, 1943. For the use of berthing space at Piers 43 and 43½ and storage space on Pier 43, from July 1, 1943 to June 30, 1944, at an annual rental of $1800.00.

(vi) REVOCABLE LEASE PERMIT DATED JUNE 8, 1944. For the use of berthing space at Piers 43 and 43½ and storage space on Pier 43, from July 1, 1944, to June 30, 1945, at an annual rental of $1800.00.

5. Revocable lease permits applied for and assigned and delivered to plaintiff United States of America, acting by and through various agencies and departments thereof, hereinafter named, under which plaintiff has entered upon and used the lands and structures, or parts thereof, and other improvements mentioned therein, and paid the rental therefor, as follows:

(i) Recovable lease permits to plaintiff, acting by and through the United States Corps of Engineers, for use of space on Piers 27, 1½ and 3, for which lease permits were executed and delivered on February 1, 1924, January 1, 1926, renewed January 1, 1927 and January 1, 1928 and January 1, 1929; and a lease permit dated January 1, 1930, renewed January 1, 1931 and January 1, 1932; these various permits being for different amounts of space on said facilities and for differing amounts of rent.

(ii) Revocable lease permits issued to plaintiff, acting by and through the United States Department of Agriculture, for space in the Ferry Building, these permits being executed and delivered on November 30, 1935, June 24, 1936, September 15, 1938, June 26, 1939 and June 30, 1940.

Also revocable lease permits issued to the plaintiff, by and through the same agency, for space in the State Agriculture Building on the Embarcadero, dated August 13, 1934 and July 10, 1936.

Also revocable lease permits issued to plaintiff, by and through the same agency, for use of space in Annex C of the Ferry Building, said lease permits being dated and delivered March 8, 1935, December 28, 1937, May 9, 1938, September 15, 1938, and June 17, 1940.

(iii) Revocable lease permits to plaintiff, acting by and through the United States Collector of Customs, District 28, for docking space on Section C of the seawall and for space on various piers and in the Ferry Building, varying in the different lease permits, said lease permits bearing date and having been delivered, respectively, as follows: June 25, 1915, April 7, 1916, July 1, 1924, May 12, 1931, May 2, 1932, May 8, 1933, May 10, 1934, June 17, 1936, June 17, 1937, May 24, 1939, May 11, 1940, June 2, 1941, May 21, 1942, May 25, 1943, May 17, 1944 and May 24, 1945.

(iv) Revocable lease permits to plaintiff, acting by and through the Navy Department, for use of wharf privileges at Pier 14, for which lease permits were executed and delivered on the following dates: January 18, 1924, June 23, 1924, July 1, 1925, June 30, 1926, June 30, 1928, May 6, 1929, June 14, 1935, June 5, 1936, May 24, 1937, May 25, 1938, June 8, 1939 and May 16, 1940.

Also revocable lease permits to plaintiff, acting by and through the same agency, for use of space on Pier 5, said permit being dated and delivered February 1, 1931; and for use of space on Pier 31, said

lease permit being dated and delivered February 21, 1931 and June 30, 1933.

(v) Revocable lease permit to plaintiff, acting by and through United States Commissioner of Immigration, for use of two rooms and office on Meigg's Wharf, said permit being dated and delivered July 1, 1919.

Also revocable lease permit to plaintiff, acting by and through the same agency for use of space on the north side of Pier 5, said permit being dated and delivered June 30, 1928; renewed on June 30, 1929, May 22, 1930, June 28, 1931, July 19, 1932 and June 9, 1933.

(vi) Revocable lease permit to plaintiff, acting by and through the United States Post Office Department, for use of space on the Ferry Landing at the foot of Market Street at a monthly rental of $250.00, said permit being dated and delivered March 28, 1896.

Also a revocable lease permit to plaintiff, acting by and through the same agency, for use of space in the Union Depot and Ferry House on the San Francisco waterfront at a monthly rental of $800.00, said permit being dated and delivered February 23, 1897.

(vii) Revocable lease permit to plaintiff, acting by and through the Inspector for the 18th Lighthouse District, for use of berthing space on the north side of Howard Street Wharf for a period of one year at a monthly rental of $100.00, said permit being dated and delivered May 22, 1911.

Also revocable lease permit to plaintiff, acting by and through the same agency, for use of berthing space at the Folsom Street Wharf for one year at a rental of $100.00 per month, said permit being dated and delivered June 18, 1914.

Also revocable lease permit to plaintiff, acting by and through the same agency, for use of berthing space and shed on the north side of Pier 15 for one year at a monthly rental of $100.00, said permit being dated and delivered August 5, 1915; renewed August 5, 1916; June 25, 1917, May 29, 1918, June 15, 1919, June 15, 1920, June 2, 1921, June 8, 1922, May 31, 1923, June 12, 1924, July 1, 1925, May 10, 1926, April 20, 1927, June 30, 1928 and May 10, 1929.

Also revocable lease permit to plaintiff, acting by and through the Superintendent of Lighthouses, for use of berthing space on Pier 19 for one year at a monthly rental of $100.00 per month, said permit being dated and delivered June 21, 1930; renewed May 11, 1931, May 21, 1932, May 2, 1933, and June 12, 1934.

(II)

On November 3, 1942, an action entitled "UNITED STATES OF AMERICA, Plaintiff, vs. Piers 7, 17, 37, 39 and 41, San Francisco Harbor, City and County of San Francisco, California, BOARD OF STATE HARBOR COMMISSIONERS FOR SAN FRANCISCO HARBOR, CITY AND COUNTY OF SAN FRANCISCO, STATE OF CALIFORNIA, *et al.*, Defendants," was commenced in the District Court of the United States in and for the Northern District of California, Southern Division (being case No. 22355-G in the files of said court), by the United States filing a Complaint in Condemnation.

The United States sought to condemn the full use and enjoyment, for a term of years ending June 30, 1945, of certain lands situate in the City and County of San Francisco, State of California, and comprising Piers 7, 17, 37,

39 and 41 located on the waterfront of said City and County of San Francisco on the western shore of San Francisco Bay.

All the lands described in said complaint constituted tide and submerged lands, partially filled and partially unfilled, located below the line of ordinary high tide along said western shore of San Francisco Bay as the same existed in 1850; and the piers and other improvements sought to be taken and condemned by the United States in said action were at the time of the filing of said complaint constructed in part upon filled tide and submerged lands and in part upon unfilled submerged lands then lying beneath the waters of San Francisco Bay.

In said complaint the United States alleged as follows:

> "That the apparent and purported owner of said above described property is the Board of State Harbor Commissioners for San Francisco Harbor,"

and

> "That so far as is known to plaintiff, the only persons, firms or corporations having or claiming any interest in the above described property, and who are therefore joined as defendants, are the following: City and County of San Francisco and State of California."

On November 3, 1942, the court made and entered an Order for Immediate Possession whereby the United States entered upon and took possession of said lands.

On February 14, 1944 the United States and the Board of State Harbor Commissioners for San Francisco Har-

bor and the State of California stipulated in part as follows:

> "That during the pendency of said action, and for the full period since the filing of said complaint and the issuance of said Order for Immediate Possession, all of the lands and property described in said complaint, and the subject of said action, have been either assigned or leased to plaintiff, United States of America, by the Board of State Harbor Commissioners for San Francisco Harbor, one of the defendants above named; that under existing leases from said Board to plaintiff, executed during the pendency of this action, plaintiff is entitled to the use and enjoyment of all of said lands and property to the end of the period for which use thereof is sought to be condemned in said action, unless sooner terminated in accordance with the provisions of said leases; and that, when fully paid, the rentals agreed to be paid by plaintiff under said assignments and leases, together with rentals heretofore paid by plaintiff to said Board thereunder, will compensate said defendants for the use by plaintiff of said lands and property for the full period of plaintiff's possession thereof since the filing of said complaint;
>
> "That it is not now necessary or desirable for plaintiff to take or condemn any interest in or to said lands or property or any of them;
>
> "That the Attorney General of the United States has duly and legally authorized M. Mitchell Bourquin, Special Assistant to the Attorney General of the United States, and attorney for plaintiff in this action, to stipulate and agree in behalf of the United States of America, plaintiff herein, to dismiss said action as to all of the defendants named in said complaint, and as to all of the lands and property described therein; * * *."

X.

State Board of Tide Land Commissioners Deeds in San Francisco Bay; and United States Condemnations of Lands So Granted.

(I)

Hunters Point.

1. The Board of Tide Land Commissioners was created by an Act of the Legislature of the State of California approved March 30, 1868 (Stats. 1867-8, p. 716). Pursuant to said Act said Commissioners were given the charge and disposition of all salt marsh and tide lands and lands lying under water belonging to the State of California and situate in the City and County of San Francisco. Said Act provided that the Board of Tide Land Commissioners should take possession of all such salt marsh and tide lands and lands lying under water to the point that might be established as the water front and should have the same surveyed to a point not beyond twenty-four feet of water at the lowest stage of the tide. It was further provided in said Act that after such survey and after the establishment of the water line front of San Francisco as provided in said Act, the Commissioners should sell at auction all the right, title and interest of the State in the lots included within the water line front so established.

2. Pursuant to said Act, as amended by an Act approved April 1, 1870 (Stats. 1869-70, p. 541), said Board of Tide Land Commissioners caused the salt marsh and tide lands, and lands lying under water in the City and County of San Francisco to be surveyed, the water line front of San Francisco was established, and said Commissioners sold the right, title and interest of the State of

California in and to the lots included within said water line front to various persons, firms and corporations.

3. Between June, 1869, and March, 1873, said Board of Tide Land Commissioners, acting pursuant to said Act of March 30, 1868, sold approximately 350 tide and submerged land lots around Hunters Point to approximately 23 purchasers.

The United States commenced three condemnation actions in the United States District Court in and for the Northern District of California, Southern Division, by which the United States sought to and did take and condemn substantially all the lands included within the tide and submerged land lots around Hunters Point which were sold by said Board of Tide Land Commissioners.

Said condemnation actions were the following:

(a) UNITED STATES OF AMERICA, *Plaintiff, vs. 230.5 Acres of Land in the City and County of San Francisco, State of California,* CARRIE F. REDNALL, *et al., Defendants* (No. 22147-R), in which the complaint was filed on April 4, 1942, wherein the United States alleged that each of the approximately 250 persons, firms and corporations therein named as defendants

> "claims to be the owner of a portion of the property subject of this action, or has or claims to have some interest therein,"

and in which a Declaration of Taking, executed by the Acting Secretary of the Navy, was filed on April 22, 1942 and the sum of $755,300.86 was deposited in court by the United States as the estimated just compensation for the property taken.

(b) UNITED STATES OF AMERICA, *Plaintiff, vs. 193 Acres of Land, City and County of San Francisco, State of California, and* MATILDA PRIOR ANDREWS II, *et al., Defendants* (No. 22261-G), in which the complaint was filed on July 25, 1942, wherein the United States alleged that each of the approximately 95 persons, firms and corporations therein named as defendants

> "may have or claim some interest in the above described land".

(c) UNITED STATES OF AMERICA, *Plaintiff, vs. Certain Land in the City and County of San Francisco, State of California,* WILLIAM HENRY ASH, *et al., Defendants* (No. 22416-R), in which the complaint was filed on December 24, 1942, wherein the United States alleged that each of the approximately 170 persons, firms and corporations therein named as defendants

> "has or may have or claim some interest in the property hereinafter described,"

and in which a Declaration of Taking, executed by the Acting Secretary of the Navy, was filed on April 29, 1943 and the sum of $297,028.50 was deposited in court by the United States as the estimated just compensation for the property taken.

The lands sought and taken in the action referred to in subparagraph (a) above (No. 22147-R) include part of the uplands of Hunters Point but the major portion of said lands consist of tide and submerged lands, partially filled and partially unfilled, lying northerly and southerly of Hunters Point. The lands sought and taken in the action referred to in subparagraph (b) above (No. 22261-G) consist entirely of the tide and submerged lands,

partially filled and partially unfilled, lying southerly of Hunters Point. The lands sought and taken in the action referred to in subparagraph (c) above (No. 22416-R) consist partially of uplands on Hunters Point and partially of tide and submerged lands, filled and unfilled, lying northerly of Hunters Point.

Hearings were had before said court as to various of the parcels of land included within the lands so taken in said actions and as to the compensation to be awarded for each such parcel. After each such hearing a final judgment was entered by said court, in which said court found that one or more of the defendants in said actions was or were the owner or owners of the parcel of property described in said judgment and entitled to the compensation for the taking thereof, and whereby it was ordered, adjudged and decreed by said court that the property described in said judgment was taken and condemned for the public uses of the United States, and that a designated sum of money was thereby awarded to the owner or owners of said parcel named in said judgment as compensation for the taking thereof.

Pursuant to such final judgments in said actions, the plaintiff United States paid substantial sums of money to various of the defendants named in said actions, including numerous defendants who were the owners of tide and submerged lands as the successors in interest of the State of California through the sales of such lands by the said Board of Tide Land Commissioners, as alleged in subparagraph 3 above.

(II)

Points Richmond and Molate

1. The Board of Tide Land Commissioners, created by an Act of the Legislature of the State of California approved March 30, 1868 (Stats. 1867-8, p. 716), as aforesaid, was also, by an Act approved April 1, 1870 (Stats. 1869-70, p. 541), given the charge and disposition of all the salt marsh and tide lands and lands lying under water belonging to the State of California and situate to nine feet of water at extreme low tide within five statute miles of the exterior boundaries of the City and County of San Francisco (excepting lands theretofore granted to the City of Oakland). Said Act, as amended, provided that said Commissioners should have such lands lying outside and within five miles of the boundary lines of the City and County of San Francisco surveyed to a depth of nine feet of water at the lowest stage of the tide and divided into lots, and should then sell such lots at public auction. Pursuant to said Act, as amended, said Board of Tide Land Commissioners caused to be surveyed the lands in the County of Contra Costa lying along the eastern shore of San Francisco Bay to nine feet of water at the lowest stage of the tide and lying within five miles of the easterly boundary of the City and County of San Francisco (comprising all of the tide and submerged lands to nine feet of water at the lowest stage of the tide lying along the shore of San Francisco Bay in Contra Costa County). Said Commissioners subdivided the land so surveyed into lots and, acting for and on behalf of the State of California, sold such lots at auction to various persons, firms and corporations. An Act of the Legislature of the State of California approved March 25, 1874 (Stats. 1873-4, p. 616) confirmed all sales of salt marsh and tide lands lying

in the County of Contra Costa within the jurisdiction of the Board of Tide Land Commissioners as constituted under said Acts of March 30, 1868, and April 1, 1870, which had theretofore been made by said Commissioners to purchasers in good faith who had paid the full consideration therefor and to whom patents had been duly issued.

2. The County of Contra Costa is located north of the County of Alameda on the eastern shore of San Francisco Bay and San Pablo Bay and on the southerly shore of the Straits of Carquinez and Suisin Bay. The westerly boundary of said County of Contra Costa, as established by Section 3954 of the California Political Code of 1872 and as presently set forth in Section 3915 of the California Political Code, is coincident with the easterly boundary line of the City and County of San Francisco and lies in San Francisco Bay, running from the northwest point of Red Rock in a southeasterly direction to a point at the southwest corner of said Contra Costa County distant three statute miles from the natural high water mark on the eastern shore of San Francisco Bay.

3. The United States has, in the exercise of its power of eminent domain, taken and condemned parcels of tide and submerged lands, filled and unfilled, along the eastern shore of San Francisco Bay in Contra Costa County and owned by various persons, firms and corporations as successors in interest of the State of California:

(a) UNITED STATES v. 412.715 ACRES

(i) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, vs. 412.715 Acres of Land, Contra Costa County, California*, SANTA CRUZ OIL CORPORATION, *et al.*, *De-*

fendants" (commonly known as the "Winehaven Case"), was commenced in the District Court of the United States in and for the Northern District of California, Southern Division (being case No. 22215-S in the files of said court), by the filing of a Complaint in Condemnation by the United States on June 25, 1942, for the establishment of fuel storage facilities for the United States Navy. The land described in said complaint consists in part of uplands at Molate Point on the eastern shore of San Francisco Bay and in part of tide and submerged lands and reclaimed lands near said Molate Point lying below the line of mean high water, as established by the survey of the California Board of Tide Land Commissioners in 1872. The United States further alleged in said complaint as follows:

> "That the apparent and purported owners of said above described property are: Santa Cruz Oil Corporation, North Bay Realty Development Company, Wells Fargo Bank & Union Trust Co., Blake Brothers Company, Southern Pacific Railroad, Atchison, Topeka & Santa Fe Railroad."

(ii) Pursuant to an Order For Immediate Possession entered by said court and filed in said action on June 25, 1942, the United States took possession of the lands described in said complaint and commenced construction thereon of the projected fuel storage facilities.

(iii) All tide and submerged lands and reclaimed lands included with the description contained in said complaint had been sold and conveyed by the State of California, acting by and through said Board of Tide Land Commissioners pursuant to said Act approved March 30, 1868, as amended by said Act approved April 1, 1870, to

various persons, firms and corporations, said conveyances having taken place during the years 1873 to 1875 inclusive. All the persons, firms and corporations described in said complaint as the "apparent and purported owners" of the tide and submerged lands and reclaimed lands sought to be condemned in said action were then the successors in interest of the State of California in and to such lands pursuant to the aforesaid conveyances.

(iv) On April 19, 1942, the United States caused to be filed in said action a "Dismissal in Part" which purported to dismiss said action

> "to the extent that it embraces and affects the lands below the line of mean high water as said line was established by survey of the Board of Tide Land Commissioners, said lands being particularly designated in said survey as tide land lots 1 to 13, inclusive, as said lots are shown on that certain map entitled, 'Map No. 1, Salt Marsh and Tide Lands situate in the County of Contra Costa, State of California, 1872,' * * *."

On said date of April 19, 1943, the United States further caused to be filed in said action a Motion for Order of Dismissal in Part and For Leave to File Amended Complaint excluding from the lands taken and condemned in said action the lands below the line of mean high water as set forth above. Said motion to dismiss and to amend the complaint was made pursuant to a request of the Secretary of War addressed to the Attorney General of the United States, reading in part as follows:

> "In view of the fact that certain portions of the lands named in the above mentioned condemnation proceedings are situated below the mean high water line,

> this Department intends to exercise on behalf of the United States the right to use the land in the exercise of the sovereign power of the United States. It is requested, therefore, that you take the necessary action to dismiss from the proceedings so much of the land as is situated below the mean high water line."

Said motion to dismiss and for leave to file an amended complaint was opposed by the defendants in said action and on December 13, 1943, said motion was denied by said United States District Court (such decision being reported in 53 F. Supp. 143). In so denying said motion the court held the United States could not dismiss its action against the land as of right so long as it intended to and did retain possession of the land obtained by it under the order of the court. The court further held that the navigation servitude of the Federal Government did not entitle that Government to appropriate submerged lands for the construction of improvements for the exclusive benefit of the Navy without payment therefor, saying at page 148:

> "It does not follow, however, that the Government may assert its power over lands subject to this servitude to construct improvements for the exclusive use of one of its agencies; that it may appropriate land for the construction of a naval fuel supply base, exclude defendants and the general public from the use and benefit of the facility, and claim that it is acting for the benefit of the public under the navigation power."

(v) Thereafter, the trial of said action was continued with respect to all the land described in the complaint, including the portion thereof lying below the line of ordi-

nary high tide; the values of the several parcels of land were determined; and the United States paid substantial sums of money, as awarded by said court, to the owners of the respective parcels, including those owning the lands lying below the line of ordinary high tide, as successors in interest of the State of California, as alleged in subparagraph (iii) above.

(b) UNITED STATES v. 126 ACRES.

(i) An action entitled "UNITED STATES OF AMERICA, *Plaintiff vs. 126 Acres of Land, more or less, in the County of Contra Costa, State of California*, THE RICHFIELD OIL CORPORATION, *et al.*, Defendants" was commenced in the District Court of the United States in and for the Northern District of California, Southern Division (being case No. 22006-R in the files of said court), by the filing of a complaint in condemnation by the United States on January 19, 1942, and said lands were taken for the construction of facilities to be used for the construction of ships. The United States further alleged in said complaint

> "That the defendants, Richfield Oil Corporation, Pacific Gas & Electric Co., Basalt Rock Company, Inc., Santa Fe Land and Improvement Co., San Francisco Bridge Co., City of Richmond, California, Andrew B. McKinne, Parr Richmond Terminal Corporation, Richmond Yacht Club, State of California, Contra Costa County, Wood and Ellis, are the apparent and purported owners of the said land described herein."

(ii) On said date of January 19, 1942, the United States caused to be filed in said action a Declaration of Taking, containing the following:

> "The gross sum of money ascertained by the acquiring authority to be just compensation for the aforesaid land in this proceeding and hereby taken is $125,525.00. Said just compensation is hereby allocated as follows:

Parcel	Ostensible Owner	Approximate Area	Estimated Compensation
1	Richfield Oil Corporation	82 acres	$82,000.00
2	Santa Fe Land Improvement Co.	7 acres	3,500.00
3	San Francisco Bridge Co.	24 acres	24,000.00
4	City of Richmond, California	13 acres	16,000.00
5	Wood and Ellis	.6 of an acre	25.00

> and the acquiring authority estimates that said sums of money are just compensation for the respective parcels of land to which they are allocated."

On said date of January 19, 1942, a Judgment on said Declaration of Taking was entered by said court.

(iii) The lands described in said complaint and sought to be taken and condemned in said action are located on the eastern shore of San Francisco Bay in Contra Costa County, California, and consist partially of upland known as Point Richmond and partially of tide and submerged lands and reclaimed lands lying below the line of ordinary high tide along said eastern shore of San Francisco Bay, as established by the survey of the Board of Tide Land Commissioners in 1872. Such land lying below said line of ordinary high tide was conveyed to various persons, firms and corporations in or about the year 1872 by the State of California, acting through said Board

of Tide Land Commissioners, pursuant to said Act approved March 30, 1868 as amended by said Act approved April 1, 1870. All the persons firms and corporations described in said complaint as the "apparent and purported owners" of the tide and submerged lands and reclaimed lands sought to be condemned in said action were then the successors in interest of the State of California in and to such lands pursuant to the aforesaid conveyances.

(iv) On December 30, 1942, a stipulation was made and executed in said action by and between the plaintiff United States and the defendant Richfield Oil Corporation whereby said defendant Richfield Oil Corporation waived all claims to compensation for its land (including tide and submerged land) taken in said action, in consideration of the delivery by the United States to said defendant Richfield Oil Corporation of a deed dated December 30, 1942, granting said defendant certain interests and rights.

(v) On September 20, 1943, a final judgment as to Parcel 3 in said action (owned by San Francisco Bridge Company and consisting in large part of reclaimed tide and submerged lands) was entered by said court, finding in part as follows:

> "That the defendant San Francisco Bridge Company was the owner of said Parcel No. 3 hereinafter described at the time of and immediately prior to the filing of the Declaration of Taking, as aforesaid, and is entitled to all the compensation for the taking thereof."

By said judgment the sum of $73,475.00 was awarded to the defendant San Francisco Bridge Company for the taking of said Parcel No. 3; and pursuant to said judg-

ment the United States paid said sum of $73,475.00 to said San Francisco Bridge Company.

(vi) In said action substantial sums of money were awarded by the said court to the other owners of tide and submerged lands taken and condemned by the United States in said action, and the United States paid the amounts of said awards to said respective owners.

(c) UNITED STATES v. 17.06 ACRES.

(i) An action entitled "UNITED STATES OF AMERICA, *Plaintiff, v. 17.06 Acres of Land, more or less, situated in the City of Richmond, County of Contra Costa, State of California; RICHFIELD OIL CO., et al., Defendants*" was commenced in the District Court of the United States in and for the Northern District of California, Southern Division (being case No. 22127-R in the files of said court), by the filing by the United States of a complaint in Condemnation on March 23, 1942, to take the fee simple title in and to certain lands in the City of Richmond for the construction of facilities to be used for the construction and repair of ships. The United States further alleged in said complaint as follows:

> "That the apparent and purported owners of the above described parcels of land are as follows:
>
> Parcel 1 Richfield Oil Co.
>
> Parcel 2 M. Elliott House Richmond Investment Company, Harry W. Wernse
>
> Parcel 3 City of Richmond, Andrew B. McKinne
>
> Parcel 4 Santa Fe Land Improvement Co."

On said date of March 23, 1942, an Order for Immediate Possession was entered by said court, whereby the United States was authorized to take immediate possession of the lands described in said complaint. Pursuant to said order the United States entered upon and took possession of said lands.

(ii) Substantially all of the lands described in said complaint as Parcels 1, 2 and 3 constituted tide and submerged lands lying below the line of ordinary high tide as established by the survey of the Board of Tide Land Commissioners in 1872, and lying in San Francisco Bay just off the shore of Point Richmond in Contra Costa County and adjacent to the lands condemned by the United States in the action entitled "*United States v. 1.0 Acres*" hereinabove referred to in subparagraph (b). Such land lying below said line of ordinary high tide was conveyed to various persons, firms and corporations in or about the year 1872 by the State of California, acting by and through said Board of Tide Land Commissioners, pursuant to said Act approved March 30, 1868 as amended by said Act approved April 1, 1870 (referred to in this Paragraph (ii)). All the persons, firms and corporations described in said complaint as the "apparent and purported owners" of the tide and submerged lands and reclaimed lands sought to be condemned in said action were then the successors in interest of the State of California in and to such lands pursuant to the aforesaid conveyances.

(iii) On December 30, 1942, a stipulation was made and entered into by and between the plaintiff United States and the defendant Richfield Oil Corporation in said action which stipulation was similar in its terms to the stipula-

tion hereinabove referred to in subparagraph (iv) of subparagraph (b) above) by which the said defendant Richfield Oil Corporation waived and relinquished any and all rights and claims to compensation for its lands (comprising tide and submerged lands) taken in said action, in consideration of the delivery by the United States of the deed and the filing by the United States of the Amended Complaint and Amendment to the Declaration of Taking in the action entitled "*United States of America v. 1.76 Acres of Land, etc.*", all as alleged above.

(iv) Said court awarded substantial sums of money to other defendants in said action owning parcels of tide and submerged lands thereby taken and condemned, and the United States paid the respective amounts of said awards to said respective owners.

XI.

City of Alameda.

The City of Alameda is located in Alameda County, California, on an island which is adjacent to the eastern shore of San Francisco Bay and which is separated from the City of Oakland by a tidal estuary known as San Antonio Estuary. The present island on which the City of Alameda is located was originally connected to the mainland by a narrow neck of swampy land, through which a tidal canal was dredged in 1890-1893, thus separating the City from the eastern shore of said Bay.

(1)

The Town of Alameda was originally incorporated by an Act of the Legislature of the State of California passed on April 19, 1854 (Stats. 1854, p. 209). Said act of incorporation was amended from time to time, and on November 21, 1884, the municipality was reorganized as a city of the fifth class under the California Municipal Corporation Act of 1883. A Freeholders' Charter was adopted by the electors of the City of Alameda in 1906 and approved by the Legislature of the State of California on February 7, 1907 (Stats. 1907, p. 1051). Said Charter was amended from time to time and was superseded in 1917 by a new Freeholders' Charter adopted by the electors of the City of Alameda in 1916 and approved by the Legislature on January 25, 1917 (Stats. 1917, p. 1752).

Said Charter of 1917 declared the boundaries of the City of Alameda to follow the center line of the Tidal Canal and along the north or Brooklyn Channel, through the Oakland Harbor and the center line of San Antonio Estuary to its mouth,

> "thence along the center line of San Antonio Estuary produced westerly to its intersection with the western

> boundary of Alameda County; thence southeasterly along the western boundary line of Alameda County to its intersection with the township * * *"

Said Charter of 1917 was amended from time to time but no change was made in the boundaries set forth above. Said charter was superseded by a new Freeholders' Charter duly adopted by the electors of the City of Alameda and approved by the Legislature of the State of California on May 11, 1937 (Stats. 1937, p. 2880). Said Charter of 1937 provided that the City of Alameda should have the same boundaries as those existing under the 1917 Charter. Said Charter of 1937, as amended by Stats. 1943, page 3256, is now in force and effect.

(II)

By an Act of the Legislature of the State of California approved June 11, 1913 (Stats. 1913, p. 707) there was granted to the City of Alameda

> "all the right, title and interest of the State of California, held by said state by virtue of its sovereignty, in and to all the salt marsh, tide and submerged lands, whether filled or unfilled, within the present boundaries of said city, and situated below the line of mean high tide of the Pacific Ocean, or of any harbor, estuary, bay or inlet within said boundaries,"

in trust for harbor purposes. Said act provided that the City should not grant, convey, give or alien any of the lands so granted it by the State. Section 2 of said act provided that such conveyance was made on the condition that the City should within five years expend not less than $200,000 upon the work of improving its harbor, and that such land should revert to the State if such condition was not complied with.

At the request of the United States, the aforesaid Act was amended by an Act of the Legislature approved May 24, 1917 (Stats. 1917, p. 907) to provide that the City could

> "grant, give, convey and alien such lands or any portion thereof, forever to the United States for public purposes of the United States,"

but only if such action was authorized and approved by a vote of a majority of the electors of the City. Said act further repealed Section 2 of the aforesaid act of June 11, 1913, which had provided for the reverter of such lands to the State if the City failed to expend $200,000 on harbor improvements within five years, as alleged above.

(III)

During the year 1930 negotiations were opened between the United States and the City of Alameda looking toward the conveyance by said city to the United States of a parcel of land located within said City and containing approximately 1100 acres, for the purpose of the establishment thereon of an aviation base. Said parcel of land consisted of tide and submerged lands lying below the line of ordinary high tide in San Francisco Bay as the same existed in 1850 and conveyed to the City of Alameda by the State of California as alleged above. A large portion of said tract was unfilled submerged land at the time of said negotiations in 1930. In this connection defendant alleges as follows:

1. At an election held in the City of Alameda on November 4, 1930, a majority of the electors of said City approved the conveyance of said tract of land to the United States. Pursuant to said election and pursuant to a resolution adopted by the City Council of said City of Ala-

meda on November 18, 1930, the mayor of said City, acting for and on behalf thereof, executed a certain deed dated December 2, 1930, whereby said City conveyed to the United States the aforesaid tract of land. The United States accepted said deed pursuant to authorization contained in an Act of Congress approved July 3, 1930 (46 Stats. at L. 857) and caused the said deed to be recorded in Liber 2588, page 44, of Official Records of Alameda County, California.

2. Thereafter an error was discovered in the description of a portion of the land intended to be conveyed by the aforesaid deed of December 2, 1930. Upon discovery of said error the mayor of said City of Alameda, pursuant to a resolution of the City Council of said city, approved June 7, 1932, acting for and on behalf of said city, executed a new and corrected deed dated June 16, 1932, whereby said City of Alameda conveyed to the United States of America the tract of land authorized to be conveyed pursuant to the aforesaid election held on November 4, 1930. The United States accepted said deed dated June 16, 1932, pursuant to said Act of Congress of July 3, 1930, and caused the same to be recorded in Liber 2838, page 216, of Official Records of Alameda County, California.

3. Thereafter and in order to remove from the title of the City of Alameda to the lands adjoining those conveyed to the United States by said deed dated June 16, 1932, any cloud which might exist because of the execution, delivery and recordation of said erroneous deed of December 2, 1930, the United States, acting by and through Lewis Compton, as Acting Secretary of the Navy, executed and delivered to the City of Alameda an instrument dated April 5, 1940, in which it was recited that the

proposed grant of said lands by said city to the United States had been submitted to and approved by a majority of the voters of said city; that the deed dated December 2, 1930, had been executed, delivered and recorded; that the description in said deed was erroneous; and that a corrected deed dated June 16, 1932, had been executed, delivered and recorded. Said instrument further contained the following recitals and provisions:

> "WHEREAS, the City of Alameda is of the opinion that the appearance of record of the extended lines or calls on its adjoining land as set forth in the paragraph next above, although forming no enclosure and embracing no definite area, *may constitute a cloud upon the title to the lands of said City adjacent to the lands acquired by the United States* under the corrected deed of June 16, 1932 aforesaid, and has requested that the United States execute to it an appropriate conveyance removing said cloud from the City's title; and
>
> "WHEREAS, the land which the United States may have acquired by either or both of the aforesaid deeds was acquired and is now used for naval purposes, and is in the custody and control of the Navy Department:
>
> "NOW, THEREFORE, the United States of America, acting by and through Lewis Compton, as Acting Secretary of the Navy, does hereby release, remise and quitclaim to the said City of Alameda, California, its successors in office, all right, title or interest whatsoever that it may appear to have of record in or to the lands within Parcel #2 as described in the aforesaid deed from the City of Alameda, California, to the United States of America, dated December 2, 1930, and recorded in Liber 2588, Page 44, official records of Alameda County, California, which it did not also

acquire by virtue of the aforesaid corrected deed of June 16, 1932, recorded in Liber 2838, Page 216, official records of Alameda County, California."

(IV)

During the year 1935 negotiations were commenced between the United States and the City of Alameda for the conveyance by said city to the United States of certain lands, comprising 929.3 acres, more or less, within the boundaries of said city for purposes of a naval base. A major portion of the lands which were the subject of such negotiations and which are hereinafter referred to constituted tide and submerged lands located below the line of ordinary high tide of San Francisco Bay as the same existed in 1850. In this connection defendant alleges as follows:

1. At an election held on January 28, 1936, a majority of the electors of said City of Alameda authorized and approved the granting by said City to the United States of said parcel of lands comprising approximately 929.3 acres for a consideration of one dollar, for use by the United States in constructing and developing a naval base, upon the condition, however, that the United States should expend or contract to spend not less than the sum of $1,000,000 in the development of said base by December 31, 1939, failing which said lands should revert back to said City.

2. Thereafter, but prior to the delivery of a deed to the United States conveying said lands, the City Council of said City of Alameda, pursuant to the request of the United States, acting by and through its Navy Department, adopted its Resolution No. 2039 dated February 4, 1936, whereby said City granted permission to the United States to commence work on the lands proposed to be con-

veyed, for the purpose of making surveys and soundings, prior to actual transfer of the title and possession.

3. At the time of the aforesaid election on January 28, 1936, a portion of the land proposed to be conveyed to the United States by the City of Alameda was subject to a lease made by said City as lessor on September 20, 1927, to Chadwick Thompson and Virgil G. Skinner as lessees, the lessees' interest therein having thereafter been assigned with the consent of said City to Alameda Airport, Inc., and said Alameda Airport, Inc. having subleased such land to Pan American Airways, Inc. On May 17, 1937, the United States, acting by and through the District Public Works Officer of the Twelfth Naval District, addressed a communication to the City Attorney of the City of Alameda stating that a cancellation of said lease by said city would be likely to result in litigation, by reason of which

> "the City could not give the Navy Department an unencumbered title to the property until the court proceedings were completed."

It was further stated in said communication that:

> "This method of acquiring the site, if litigation were involved, would be unsatisfactory for the Navy Department, the City and the lessee."

The following proposal was then advanced in said communication for consideration by said City Attorney:

> "As an alternative the lease might be cancelled by mutual agreement between the City and the lessee, the lessee to retain title to all buildings and other such structures erected by him but agreeing to remove such as he desires when directed to do so by the Navy Department: the City would then give the Navy Department an unencumbered title to the land; the Navy Department would give a permit, say to July 1, 1938,

for the Pan American Airways Company to operate its trans-Pacific planes as is now done; the Navy, at the expiration of this permit would direct the lessee to remove the buildings on the site; the Pan-American Airways Company and the lessee would make their own arrangement as to the continued use of the buildings during the life of the permit, possibly that the Pan American Airways Company would continue to pay to the lessee the same rent as at present."

It was further pointed out in said communication that the advantage of the proposed solution to the Navy Department would be that:

"An unencumbered title would be acquired for the property, thus permitting the Navy Department to start at once (instead of at some indefinite time in the future) the development of the Air Station."

4. Pursuant to the aforesaid election of January 28, 1936, and further pursuant to Ordinances Nos. 616 and 617 adopted by the City Council of the City of Alameda, said city caused to be executed by its proper officers and delivered to the United States a certain deed dated November 26, 1937, whereby said City did convey the title to the aforesaid parcel of approximately 929.3 acres of land to the United States for the purposes of a naval base, subject, however to the conditions alleged in subparagraph 1 above with respect to development of said base by the United States. The United States thereupon accepted said deed, upon the aforesaid conditions, and paid to the City of Alameda the consideration of one dollar, pursuant to authorization contained in an Act of Congress approved June 24, 1936 (49 Stat. at L. 1901).

Said Act of Congress provided in part as follows:

> "That the Secretary of the Navy be, and he is hereby, authorized to purchase in behalf of the United States as a site for a naval air station, at a cost not to exceed $1, and to accept the title in fee simple to all that certain piece or parcel of land situate, lying and being south of the Alameda Mole, in the city of Alameda, county of Alameda, State of California, and more particularly described as follows: [description] *Provided, however,* that at least $1,000,000 be expended for or contracted to be expended in the actual work of development of said naval air base by December 31, 1939, otherwise said lands shall automatically revert back to said city of Alameda."

Upon accepting said deed, the United States caused the same to be recorded on November 26, 1937, in Liber 3583, Page 1, of Official Records of Alameda County, California.

C.

Decisions and Rulings by Branches and Departments of the United States That California Owns the Tide and Submerged Lands.

The judicial, legislative and executive branches of the government of the United States, the Attorney General of the United States, the Secretary of the Interior and the Department thereof, the General Land Office, the War Department and Chief of Engineer and subordinates thereof, the Navy Department, and other agencies of the United States, have over a period of many decades, constantly and in innumerable instances, declared, ruled and decided that the State of California and its grantees are the owners of and hold the title to all the tide and submerged lands within the limits and boundaries of the State of California (subject to grants to and condemnations by the United States of portions thereof). Some only of these declarations, rulings and decisions are the following:

I.

By Judicial Branch.

This Honorable Court and the lower Federal Courts have declared and determined that the State of California and its grantees are the owners respectively of the tide and submerged lands within the boundaries of said State, as heretofore alleged in the First Affirmative Defense, Paragraph XVI and XVII hereof, with respect to the basis or source of the State's title. Said decisions are likewise recognitions and acquiescences by a coordinate branch of the United States government in the title of the State

of California and its grantees, and a few instances thereof are set forth as follows:

1. The Federal Courts have declared that the 144-acre tract of submerged lands attempted to be described in paragraph VI of the complaint herein extending ¾ of a mile into the Pacific Ocean and Santa Barbara Channel thereof, is owned by the State of California and its lessee, Pacific Western Oil Corporation.

Spaulding v. United States (D. C. S. D. Cal. 1937), 17 Fed. Supp. 906 involved State of California Tide and Submerged Lands Lease No. 92 held by Pacific Western Oil Corporation. *Spaulding v. United States* (D. C. S. D. Cal.), 17 Fed. Supp. 957 involved State of California Tide and Submerged Land Lease No. 93, in which Pacific Western Oil Corporation held an interest, and which lease extends ¾ of a mile into the ocean and covers an area of submerged lands approximately the same size as and adjoins said Lease No. 92. In referring to the entire area of tide and submerged lands covered by said Leases Nos. 92 and 93, and describing them generically as "tidelands," the court there said that:

> *"The tidelands of California are held by the State in trust for the people for the purpose of navigation, commerce and fishery.* Constitution of California, Art. 15 §2; *Borax Consolidated v. Los Angeles* (1935), 296 U. S. 10, 56 S. Ct. 23, 80 L. Ed. 9; *Illinois Central Railroad Co. v. Illinois* (1892), 146 U. S. 387, 452, 13 S. Ct. 110, 36 L. Ed. 1018; *Forestier v. Johnson* (1912), 164 Cal. 24, 127 P. 156; *City of Oakland v. Buteau* (1934), 219 Cal. 745, 29 P. (2d) 177; *Boone v. Kingsbury* (1928), 206 Cal. 148, 273 P. 797.

> *"While the state is prohibited from alienating the tidelands* (Constitution of California, art. 15, §3), *general leasing statutes allowing their leasing exist.* Act. 6345, 2 Deering's General Laws of California (1931) p. 3468; Act 6351, 2 Deering's General Laws (1931) p. 3473; Act 8418, Deering's General Laws (1931) p. 4700. *The control of some of the state's tidelands has also been transferred from the state to several of its largest cities and counties, through legislative enactments."*

These decisions were affirmed by the Ninth Circuit Court of Appeals: 97 F. (2d) 697; and 97 F. (2d) 701; *certiorari* was denied by this Honorable Court: 305 U. S 644.

2. The Federal Courts have declared the State of California to be the owner of the submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof within the immediate vicinity of said State Leases Nos. 92 and 93. In the case of *Bankline Oil Company v. Commissioner,* 90 F. (2d) 899, appeal to this court 303 U. S. 362, State Tide and Submerged Land Lease No. 89 in the Elwood oil field was involved. Said lease extends approximately ¾ of a mile into the Pacific Ocean and Santa Barbara Channel thereof. The Circuit Court of Appeals there stated (90 F. 2d at 900) that:

> *"The State of California holds the tide lands within its boundaries in its sovereign capacity in trust 'for the people of the State* that they may enjoy the navigation of the waters, carry on commerce over them, and have the liberty of fishing therein free from interference of private parties.' *Boone v. Kingsbury,* 206 U. S. 148, 183, 273 P. 797, 812. See *Constitution of California,* Article 15; *Illinois Central Rail-*

road Company v. Illinois, 146 U. S. 387; *Borax Consolidated v. Los Angeles,* 296 U. S. 10; *Heckman v. Swett,* 99 Cal. 303, 33 P. 1099; *Oakland v. Buteau,* 219 Cal. 745, 29 P. (2d) 177. *The petitioner's lease was granted pursuant to the Statutes of California,* 1921, c. 303, p. 404, entitled, 'An act to reserve all minerals in state lands,' etc. *By this act, the state has reserved the mineral deposits in all lands belonging to the state.* . . .

* * * * * * * *

"One of the purposes of the aforesaid act . . . is to give to the citizens of the state of California 'an opportunity to intercept the large volumes of oil gravitating seaward to inextricable depths, and to reduce to useful purposes *oil, gas and mineral deposits reposing beneath the ocean's bed.*' Boone v. Kingsbury, 206 Cal. 148, 181, 273, p. 797, 811, *supra.* It was enacted in pursuance of the policy of the state of California 'with respect to the extraction of its minerals *from state lands.*' Boone v. Kingsbury, 206 Cal. 148, at page 185, 273 P. 797, 813, *supra.* The legislation was upheld by the California Supreme Court against the claim that it violated the implied trust under which *the state holds its tide lands* because the rights granted by the leases do not interfere with such trust, ...' Boone v. Kingsbury, 206 Cal. 148, at page 183, 273 P. 797, 813, *supra.*"

3. In *Boone v. Kingsbury* (1928) 206 Cal. 148; 273 Pac. 797, this Honorable Court denied petition for certiorari, 280 U. S. 517, after decision of the Supreme Court of the State of California. That case involved seven applications for oil and gas prospecting permits covering State of California tide and submerged lands extending into the Pacific Ocean and Santa Barbara Channel thereof at Sea

Cliff, County of Ventura. The Legislature of the State of California in 1921 enacted a statute (Stats. 1921, p. 404, Ch. 303) providing for the execution of prospecting permits and leases from the State of California to citizens of the State upon tide and submerged lands within the boundaries of the State. Said seven applications for prospecting permits were filed with the State Surveyor General pursuant to said Act. The Surveyor General having refused to grant the permits on the contention that the said Act of the Legislature was invalid, a mandamus proceeding was brought in the Supreme Court entitled *Boone v. Kingsbury, supra.* The Supreme Court of California determined that said Act was valid, that the State of California was the owner of the tide and submerged lands, and had power to provide for leasing its tide and submerged lands in the Pacific Ocean and elsewhere within its boundaries for purposes of exploring for and extracting oil and gas therefrom. The Court there held that the State of California is the owner of the tide and submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof. In so doing, said Court repeated the decisions of this Honorable Court, holding the States to be the owners, respectively, of the tide and submerged lands within their limits and boundaries. Quoting at length from one of said decisions, *Shively v. Bowlby*, 152 U. S. 1, the Court there said in part that:

> "Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State —a portion of the royalties belonging thereto, and held in trust for the public purposes of navigation

and fishery—and cannot be retained or granted out to individuals by the United States. Such title being in the State, the lands are subject to State regulation and control, * * *."

4. This Honorable Court has declared or decided in not less than eight decisions extending over a period from 1867 to 1935, that the State of California is the owner of all tide and submerged lands and of the soils under all tidewaters within the borders, limits or boundaries of the State of California. Reference is hereby made to Paragraph XVI of the First Affirmative Defense hereof wherein the said declarations or holdings of this Court in those eight decisions are set forth.

5. The United States District Court for the Southern District of California, in *Dean v. City of San Diego* (1921) 275 F. 228, 231, stated that:

". . . By repeated declarations of our Supreme Court, with respect to lands acquired by the United States and out of which sovereign States of the Union were thereafter created and set up, it has been definitely decided that *lands lying beneath the navigable waters of the sea* or any of its arms *became the property of such sovereign state adjacent thereto,* subject only to the rights surrendered to the general government through the Federal Constitution. Pollard v. Hagan, 3 How. 212, 11 L. Ed. 565; Weber v. Board of Harbor Commissioners, 18 Wall. 57, 65, 21 L. Ed. 798; City and County of San Francisco v. Le Roy, 138 U. S. 656, 670, 11 Sup. Ct. 364, 34 L. Ed. 1096. In that wise, the State of California became possessed of lands below ordinary high tide in San Diego Bay."

II.

By the Legislative Branch.

(A) Congress has never enacted legislation or made provision in any manner whatsoever for the sale, homesteading, donation or other conveyance whatever, of any tide or submerged lands, either along the coasts of the various states of the Union, or in any of the bays, harbors, lakes or rivers thereof. Congress has consistently refrained from attempting to dispose, in any manner whatever, of the tide and submerged lands, either on the coasts, or in bays, harbors, lakes or rivers. This uniform policy on the part of Congress has often been called to the attention of the Congress and the public by the courts and the various departments of the United States, including the Secretary of Interior. Despite such knowledge on the part of Congress and after the matter had been pointed out by the court and by the Secretary of the Interior, Congress has enacted amendments to the general land laws and the Mineral Leasing Act, but has never changed its policy of refraining from providing for disposal of tide and submerged lands. A few instances in which this uniform policy of Congress of refraining from attempting to dispose of tide and submerged lands has been publicly announced, are the following:

1. In *Barney v. Keokuk,* 94 U. S. 324-328, this court stated that:

> "The United States has wisely abstained from extending (if it could extend) its surveys and grounds beyond the limits of high water."

2. In *Mann v. Tacoma Land Co.* (1894), 153 U. S. 273-284:

"It is settled that the general legislation of Congress in respect to public lands does not extend to tide lands."

3. In *Shively v. Bowlby* (1894), 152 U. S. 1, 48, it is stated that:

"But Congress has never undertaken by general laws to dispose of such [tide or submerged] lands * * * The Congress of the United States, in disposing of the public lands has constantly acted upon the theory that * * * the navigable waters and the soils under them, whether within or above the ebb and flow of the tide, shall be and remain public highways; * * *"

4. The Commissioner of the General Land Office and Secretary of the Interior have likewise ruled, in denying applications of W. G. Clark, *et al.*, under dates of September 18, 1934, and February 7, 1935, set forth in Paragraph C-IV-4 of this Second Affirmative Defense.

(B) The Congress of the United States has enacted legislation asserting and declaring that the State of California and its grantees are the owners of the tide and submerged lands within the limits of said State. Some of these legislative enactments are heretofore alleged in this Second Affirmative Defense, in connection with grants to the United States. Said legislative enactments are likewise recognitions and acquiescences on the part of Congress of the title of the State in and to the tide and sub-

merged lands, and a few of these instances are set forth as showing such recognitions and acquiescences:

1. By Act approved July 25, 1912, Congress provided for an exchange between the United States and the City of Los Angeles of two 9.75-acre tracts of submerged lands lying in the Pacific Ocean and Bay of San Pedro. The details of said exchange are set forth in Paragraph B-X of this Second Affirmative Defense. The Congress there provided in said Act approved July 25, 1912:

> "That the Secretary of War be and he is hereby authorized to grant to the City of Los Angeles, California, all of the right, title and interest of the United States in and to that portion of *the submerged lands around the military reservation on Deadman's Island acquired under act of the Legislature of the State of California* approved March 9, 1897, which lies west of the westerly pierhead line of Los Angeles Harbor between Station 15 as established by the Secretary of War (July 29, 1908) and Station 12 as established May 31, 1911, containing an area of 9.75 acres more or less, in exchange for the grant by said City to the United States, for use for public purposes, of an approximately *equal area of submerged lands of said city* in that portion of Los Angeles Harbor known as the outer harbor, having a frontage of 950.53 feet on the West Channel, and lying adjacent and southerly of the submerged lands in front of the San Pedro military reservation."

2. An Act of Congress approved March 3, 1925 (43 Stats. p. 1189) made an appropriation for the improve-

ment of the Los Angeles and Long Beach Harbors, California, "in accordance with the reports submitted in House Document numbered 349, sixty-eighth Congress, First Session, *and subject to the conditions set forth in said document;* * * *." One of the conditions set forth in House Document 349 required the City of Los Angeles to grant to the United States a 61.98-acre parcel of said City's submerged lands in the Pacific Ocean and Bay of San Pedro in exchange for a portion of the United States Military Reservation at Deadman's Island, said report requiring in this connection that the City of Los Angeles

> "(a) *Cede to the United States,* in lieu of that portion of the Military Reservation at Reservation Point which will be required for widening the main entrance channel *an equivalent area to the east, adjoining the present Federal holdings.*"

3. Congress passed an Act of June 2, 1939 (53 Stats. 800) declaring the title of tide and submerged lands within the boundaries of the City of Oakland, California, to be owned by the City of Oakland, which City is the grantee of the State of California of said tide and submerged lands, as is more particularly alleged in Paragraph B-VIII of this Second Affirmative Defense. In said Act Congress declared that:

> "Sec. 3.
>
> (a) The Secretary of the Navy is hereby authorized to accept or acquire title in fee simple at a cost of not more than $300,000 to all *that area of land, including title and submerged lands, filled and un-*

filled, situate, lying and being in the middle harbor area of the City of Oakland, County of Alameda, State of California, *now owned in part by said City of Oakland* and in part by the Southern Pacific Company, and described in a so-called Map and Description of Naval Supply Depot Site, dated September 17, 1936, as Parcels A, B, D, D-1, D-2, D-3 and E, containing in all *four hundred and two acres,* more or less, for use as a site for a naval supply depot. . . ."

4. By joint resolution of Congress approved July 9, 1937 (50 Stat. 488), Congress established a Commission to be known as the United States Golden Gate International Exposition Commission, and authorized the appropriation of $1,500,000 in connection with the San Francisco 1939 World's Fair. Said joint resolution recognized and declared the ownership of what is now known as "Treasure Island," an artifically filled in portion of the Bay of San Francisco, as being municipally owned, by declaring as follows:

"WHEREAS, a site for the exposition *an island of 400 acres, municipally owned* and located in the center of San Francisco Bay, is now nearing completion, and the San Francisco Bay Exposition, Incorporated, will expend not less than $24,500,000 on its improvement, said site upon the close of the exposition to become a municipal airport serving the entire metropolitan San Francisco Bay district and forming an adjunct of vast importance to national defense; * * *"

III.

By the Attorney General of the United States.

The Attorney General of the United States is required by Acts of Congress to render his opinion on the title to all lands acquired or received by the United States prior to construction of any improvements thereon. In pursuance of his said duty, the Attorney General of the United States has on occasions too numerous to mention rendered his opinion over a period of many decades that the State of California and its grantees, respectively, are the owners of the tide and submerged lands within the limits, borders and boundaries of the State, in connection with grants and leases to the United States of portions of tide and submerged lands within the State of California.

By Act of Congress of September 11, 1841 (5 Stats. 468), now embodied in Revised Statutes Section 355, and in 34 U. S. C. A. Section 520, as amended by Act of June 28, 1930, and by Act of October 9, 1940, and also embodied in 40 U. S. C. A. Section 255 and 50 U. S. C. A. Section 175, it is provided that:

> "No public money shall be expended upon any site or land purchased by the United States for the purpose of erecting thereon * * * public building, of any kind whatever, until the written opinion of the Attorney General shall be had in favor of the validity of the title * * *. The District Attorneys of the United States, upon the application of the Attorney General, shall furnish any assistance or information in their power in relation to the titles of the public property lying within their respective districts. * * *."

Regulations have been issued by the Department of Justice and the Attorney General "For The Preparation

Of Title Evidence In Land Acquisitions By The United States" directing the procedure of the attorneys of the Department of Justice in reviewing land titles in acquisitions by the United States. Section 1 of this Regulation states in part that:

> "It is considered to be the duty of the heads of the acquiring agencies to furnish the Attorney General any necessary evidence of title of land to be acquired by direct purchase, exchange or donation, the expense of procuring the same to be paid out of the appropriations made for the respective departments, unless by contract or by statute vendors are required to furnish such evidence."

1. The Attorney General on June 30, 1927, rendered his written opinion to the Secretary of War finding that title to a 61.98-acre parcel of submerged lands in the Pacific Ocean and Bay of San Pedro was owned by the City of Los Angeles, stating in part that:

> "I have the honor to report that I have examined the abstract of title to 61.98 acres of land in the City of Los Angeles, County of Los Angeles, which are proposed to be purchased by the Government, under the provisions of the River and Harbor Act of March 3, 1925, 68th Congress, Docket #349, the total consideration being $1.00.
>
> * * * * * * * *
>
> "The abstract contains 29 pages and was certified to by J. T. Saunders, Official Searcher of the City of Los Angeles, with certificate attached, dated February 4, 1927, which certificate is satisfactory. A map of the land made by the engineers of the War Department accompanies the abstract.

"From an examination of the abstract, *I find the title to said land in the City of Los Angeles.* When the undated deed accompanying the abstract has been signed by the City of Los Angeles, acknowledged according to the laws of the State of California, and placed of record, and another certificate has been attached to the abstract showing the recording of said deed, the payment of all taxes, the examination of the record brought down to a date subsequent to the recording of the deed, that nothing has been done to affect the title to this land since the date of making the present certificate, and the abstract shall have been returned to me, I will then approve the title.

"The abstract and related papers are enclosed herewith.

Respectfully,

William D. Mitchell,
Attorney General."

2. On October 16, 1915, the United States Attorney for the Southern District of California addressed the City Attorney of the City of Los Angeles and advised that the Attorney General of the United States had rendered his opinion that the City of Los Angeles was the owner of a 9.75-acre parcel of submerged lands lying in the Pacific Ocean and Bay of San Pedro, and stated that:

"I have to advise that *the Attorney General has passed the title of the City of Los Angeles to the 9.75 acres* of land in the outer harbor at Los Angeles, California, which the City of Los Angeles had been heretofore authorized to transfer to the United States Government in exchange for a like amount of land lying on the westerly side of the entrance channel to the inner harbor of Los Angeles, *and has found the title good.*

"Pursuant to his instructions, a deed from the City of Los Angeles to the United States has been placed of record and I understand that the actual exchange of the property took place sometime ago."

3. In the year 1934, the Attorney General of the United States and the United States Attorney in Los Angeles, California, rendered an opinion that the City of Newport Beach was the owner of the submerged lands lying in the Pacific Ocean in front of the entrance to Newport Beach, in connection with five warranty deeds from said City to the United States, conveying to the United States approximately twelve acres of submerged lands lying in the Pacific Ocean. In the correspondence between the City of Newport Beach and the United States Attorney in Los Angeles, leading up to the said opinion of the Attorney General of the United States that the City of Newport Beach was the owner of said submerged lands, a letter of May 2, 1934 states that:

"Mr. Powell [Deputy United States Attorney in Los Angeles] recommended in place of a quit-claim deed that the city give a warranty deed to all the right, title and interest to the east and west jetties, the warranty deed to include the right of extending the jetty. He thought that this method of conveyance would be more acceptable as the *State of California has conveyed to the City of Newport Beach certain rights to tidelands and submerged lands along the Ocean Front and from the City limits of Newport Beach extending three miles from the shore line.*"

4. On February 28, 1902, the United States Attorney in Los Angeles rendered his opinion to the United States District Engineer Office at Los Angeles stating that title to all accretions which had formed upon tide and sub-

merged lands in the Pacific Ocean and Bay of San Pedro easterly of the East Jetty Breakwater were owned by the State of California and not by the United States.

8. On April 9, 1853, the Attorney General of the United States rendered his opinion to the Secretary of the Navy finding that the State of California was the owner of and held title to all the tide and submerged lands in the Bay of San Francisco surrounding Mare Island, and there stated in part as follows:

> "Following up the suggestions and inquiry made by Mr. Cooley, I am satisfied that the *State of California may set up and probably maintain title as against the United States* to so much of Mare Island as is subject to overflow by water, whether tidal or otherwise, *that is, at least, to all below high water mark.*
>
> "In the first place, the Supreme Court has decided in the case of Pollard v. Hagan, 3 Howard 212, that the *shores of navigable waters*, and the *soils under them* were not granted by the Constitution to the United States, but were reserved to the States respectively, and the new States have the same right, sovereignty and jurisdiction over this subject as the original States. This decision has been recognized and more than once reaffirmed by the Supreme Court. See Goodrich v. Kibbe, 9 Howard 471-477, and Doe v. Beebe, *et al.*, 13 Howard 25. It is immaterial, under these decisions, whether the general sovereignty of the United States, and their right of domain, come by treaty with a foreign power or otherwise. In all cases, on the admission of any State into the Union the land of the shores below high water mark, passes to, and vests in that State by virtue of the Constitution.
>
> "In the second place, by act of Congress passed the 20th day of September, 1850, all the swamp and

other overflow lands in the State of Arkansas, made thereby unfit for cultivation are granted to said State and the provisions of the Act are extended to and its benefits conferred upon each of the several States of the Union in which such swamp and other overflowed lands may be situated. The State of California had already, by Act of September 9, 1850, been admitted into the Union and is, of course, entitled to all uncultivated overflowed lands within its limits as against the United States. It seems to me, that *on one or both of these grounds*, the State of California *may lay claim to all that of Mare Island* which is now below high water mark, and which is just as necessary as the upland, Nay, more necessary for the purposes of a Navy Yard. It will not avail anything for the United States to acquire the upland, unless it may construct wharves and docks, which of course must be situated on this very overflowed or tide water shore land. Nay, how can the United States enjoy the use of Mare Island as a Navy Depot *while its entire shore belongs to California* who's rights of property may shut up the Island against access of ships as effectually as if it were surrounded by a wall of granite . . .

"I recommend that therefore, as indespensible prerequisites to any lawful expenditures of public money on Mare Island:

* * * * * * * *

"*Secondly*, that the State of California be invited to relinquish to the United States whatever claim, if any, she may have, to the shores or overflowed lands of Mare Island."

(8 Op. Atty. Gen. 422.)

6. The Attorney General of the United States in the year 1889 rendered his opinion that the State of California had validly conveyed to the United States title to a 24.25-acre parcel of tide and submerged lands lying in the Pacific Ocean in front of the Entrance of Humboldt Bay, California, pursuant to the Act of the Legislature of the State of California approved March 15, 1889, and in accordance with the Act of Congress of August 5, 1886. (1889 Annual Report of the Chief of Engineers, U. S. Army, Part 4, p. 2490.)

7. The Attorney General of the United States in the month of June, 1935, rendered his opinion to the Navy Department finding that the title of the State of California was valid and that a certain deed duly conveyed to the United States a parcel of tide and submerged lands lying in the Pacific Ocean, in front of North Island outside the Bay of San Diego, as well as certain parcels of tide and submerged lands lying within the Bay of San Diego. On June 5, 1934 the Navy Department wrote to the Department of Finance of the State of California and advised that the deed executed by the State of California conveying said tide and submerged lands both in the Pacific Ocean and in the Bay of San Diego had been referred to the United States Attorney in Los Angeles

> "for investigation as to sufficiency of title, after which said deed will be forwarded to the Navy Department in Washington."

On February 11, 1935 the United States Attorney at Los Angeles wrote to the Director of Finance of the State of California advising that said deed conveying said parcels of tide and submerged lands both in the Pacific Ocean and in the Bay of San Diego, had been delivered to his office for review and then stated in part that:

"The Attorney General, in discussing this matter in correspondence, has said in part:

> 'In a similar case where land was to be acquired from the State of New Jersey, the Attorney General approved the title on the certificate of the Land Commissioner, who relatively holds the same position as the Director of Finance of the State of California, that such lands had not been otherwise disposed of. It ought not to be a difficult matter to secure such a certificate in the present instance.'

"We will be pleased to receive from you some sort of certificate which you can prepare, so that we may formally pass the matter.

"The Attorney General has called our attention to a statement in a letter to him from the Secretary of the Navy in which the Secretary has said: 'They [land in question] constitute part of the area the title to which was transferred from the State of California to the City of San Diego by the Act of the Legislature approved May 1, 1911 (Stats. 1911, p. 1357).'

"In reading the Act of May 1, 1911, at page 1357 of the statutes of that year, we find that certain lands passed to the City of San Diego under certain conditions set forth in said Act. I am wondering if it will be necessary to obtain a quitclaim deed from the City of San Diego."

On June 25, 1935 the Navy Department wrote to the Department of Finance of the State of California and advised that the Attorney General of the United States and the United States Attorney in Los Angeles had approved the title and that the Navy Department thereby accepted the deed from the State of California conveying said parcels of tide and submerged lands in the Pacific Ocean and also in the Bay of San Diego.

IV.

By the Department of the Interior, Its Secretary, and the General Land Office.

Innumerable opinions, decisions and rulings have been made over a period of many decades by the Department of the Interior, its Secretary, and the General Land Office, declaring, holding and ruling that the State of California and its grantees, respectively, are the owners of the tide and submerged lands within the borders, limits and boundaries of the State of California. A few of these rulings, decisions and opinions are the following:

1. The Commissioner of the General Land Office, on March 4, 1882, rejected an application of W. E. Morris seeking to file a placer claim under the laws of the United States lying in the ocean between high and low tide on the Pacific Coast in the State of California. In his written opinion (9 Copp's Landowner, p. 5) he stated as follows:

"Wm. E. Morris, Esq.,

678 24th Street, Oakland, California.

"Sir: I am in receipt of your letter of the 15th ulto., asking 'whether or not placer claims on the Pacific coast, lying on the beach, between high and low tide, are open to location and patent under the United States mining laws.'

"In reply, I have to state that the mineral lands, to which the laws of the United States are appliable are, as stated in the original mining act of July 4, 1866, 'mineral lands of the *public domain*.'

'*The shores of navigable waters and the soils under them * * * were reserved to the States respectively.* The new States have the same rights, sov-

ereignty, and jurisdiction over this subject as the original States.' This is the language of the court in Pollard v. Hagan, 3 Howard 212; 15 Curtis 391; and in the case of Ward v. Mulford, 32 Cala. 365, it was specifically stated by the court 'that land covered and uncovered by the ebb and flow of the neap or ordinary tides, the State owns by virtue of its sovereignty.'

"Hence this Department has no jurisdiction over such lands.

"N. C. McFarland, Commissioner."

2. In the year 1926, the First Assistant Secretary of Secretary of the Interior Work issued a ruling letter in response to an application for an oil and gas lease from the Department of the Interior, and therein ruled that the bed of the Pacific Ocean was not a part of the public domain of the United States but that the State of California is the owner of and possesses the submerged lands along its coast seaward for three miles as well as submerged lands in its bays and harbors.

3. Harold L. Ickes, Secretary of the Interior, issued his written opinion and ruling dated December 22, 1933, rejecting an application of Olin S. Proctor for an oil and gas permit or lease under the Federal Mineral Leasing Act of February 25, 1920, as amended, which ruling states as follows:

"The Secretary of the Interior,
Washington, December 22, 1933.

"Mr. Olin S. Proctor,
Long Beach, Calif.

"My dear Mr. Proctor:

"I have received, by reference from the Department of State, copies of your letters of October 15 and November 22.

"As to the jurisdiction of the Federal Government over lands bordering on tidewater, the Supreme Court of the United States has held in the case of *Hardin v. Jordan* (140 U. S. 371), as follows:

" 'With regard to grants of the Government for lands bordering on tidewater, it has been distinctly settled that they only extend to high-water mark, and that the title to the shore and lands under water in front of lands so granted inures to the State within which they are situated, if a State has been organized and established there. *Such title to the shore and lands under water is regarded as incidental to the sovereignty of the State*—a portion of the royalties belonging thereto and held in trust for the public purposes of navigation and fishery—*and cannot be retained or granted out to individuals by the United States.*'

"*The foregoing is a statement of the settled law* and therefore no rights can be granted to you either under the leasing act of February 25, 1920 (41 Stat. 437), or under any other public-land law *to the bed of the Pacific Ocean either within or without the 3-mile limit. Title to the soil under the ocean within the 3-mile limit is in the State of California, and the land may not be appropriated except by authority of the State.* A permit would be necessary to be obtained from the War Department as a prerequisite to the maintenance of structures in the navigable waters of the United States, *but such a permit would not confer any rights to the ocean bed.*

"I find no authority of law under which any right can be granted to you to establish your proposed structures in the ocean outside the 3-mile limit of the jurisdiction of the State of California, nor am I

advised that any other branch of the Federal Government has such authority.

"Sincerely yours,

"(Signed) Harold L. Ickes,
"Secretary of the Interior."

4. On February 7, 1934, Joseph Cunningham filed an application with the General Land Office of the Department of the Interior for an oil and gas permit or lease describing a parcel of 1920 acres of submerged lands lying in the Pacific Ocean off the shore of the City of Huntington Beach, California. On March 3, 1934 Hubert L. Rose, Jr., filed a like application describing a 300-acre parcel of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On March 5, 1934 Deryll Mayhew filed a like application describing a 1600-acre parcel of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On March 6, 1934 Fred Vermilyea filed a like application describing a 364-acre parcel of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach.

The Commissioner of the General Land Office on April 18, 1934 rendered his written opinions rejecting said applications and stated in part as follows:

"Huntington Beach is located in Las Bolsas private land grant in California, and the west boundary of said grant is the Pacific Ocean. Therefore, the land applied for in this application is either within the exterior boundaries of the confirmed Las Bolsas land grant, title to which has passed from the Government, *or in the Pacific Ocean. If it is below the line of ordinary high tide, jurisdiction thereover is in the State of California, as upon its admission into*

the Union it became, by virtue of its sovereignty, the owner of all lands extending seaward so far as its municipal domain extends, subject to the public right of navigation.

"Accordingly, you will notify Cunningham that his application is hereby rejected subject to his right of appeal within 30 days from receipt of notice hereof."

Appeals were taken to the Secretary of the Interior by said Cunningham, Rose, Mayhew and Vermilyea. On October 4, 1934, the Secretary of the Interior rendered his formal decision and opinion affirming the Commissioner rejecting said application. Said opinion is reported in 55 I. D. 1. The Secretary in his opinion ruled in part as follows:

"The applicant, by his attorney, has appealed on the following grounds:

"1. That an important question, not only of law but of public policy, is involved and neither has probably ever heretofore been presented, argued, or discussed so thoroughly as now proposed.

"2. That, in addition to the above, the question has never been fully and completely considered in the light and trend of present-day thought, legislation and decisions.

"3. That the decision appealed from is contrary to law and the rights of the United States.

"4. That the Supreme Court of California has decided and recognized that the State does not acquire title to minerals by virtue of its so-called "sovereignty."

"5. That the United States has never by act of Congress or otherwise specifically granted, ceded, relinquished or patented tide or submerged lands to the State of California or to any citizen.

"6. That the State of California accepted statehood with the express stipulations and conditions that it would never interfere with the primary disposal of the public lands within its limits, and that it would pass no law and do no act whereby the title of the United States to, and the right to dispose of, the same should be impaired or questioned.

"7. That certain decisions of the courts which may be viewed by some people as lending color or support to the view expressed by the Commissioner can be fully and completely explained and distinguished.

"8. That in view of new conditions and trend of thought fancied precedents should be overruled and the true rule or new precedents established.

"9. That the limited political jurisdiction of California over tide and submerged lands is in trust to police locally and to prevent improper uses of such lands.

"10. That the unit plan of development contemplated by the appellant will not interfere with the development or pursuit of fishing, commerce, or navigation.

"11. That the granting of a permit, and a lease after discovery, will result in the payment of large sums of money to the Federal Government, of which the State of California will receive a large share.

"The appellant and his attorney ask that opportunity be given for oral presentation and argument before the Department and that they be given 'the maximum of time in which to prepare a comprehensive brief covering the history, constitution, laws, decisions, and present trend of opinion, which will be helpful and determinative on the question.'

"In the case of *Knight v. U. S. Land Association* (142 U. S. 161), the court said:

> 'It is the settled rule of law in this court that absolute property in, and dominion and sovereignty over, the soils under the tide waters in the original States were reserved to the Several States, and that the new States since admitted have the same rights, sovereignty and jurisdiction in that behalf as the original States possess *within their respective borders. Martin v. Waddell* (16 Pet. 367, 410); *Pollard v. Hagan* (3 How. 212, 229); *Goodtitle v. Kibbe* (9 How. 471, 478); *Mumford v. Wardwell* (6 Wall. 423, 436); *Weber v. Harbor Commissioners* (18 Wall. 57, 65).'

"The case last cited involved tide lands in the State of California, and with respect thereto the court said:

> 'Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, *all soils under the tidewaters within her limits* passed to the State, with the consequent right to dispose of the title to any part of said soil in such manner as she might deem proper, subject only to the paramount right of navigation over the waters, as far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General Government.'

"See also *Shively v. Bowlby* (152 U. S. 1), and the cases therein cited; *Coburn v. San Mateo County* (75 Fed. 520); *United States v. Holt Bank* (270 U. S. 49).

"There is in the State of California a law providing for the issuance of oil and gas prospecting permits and leases on State lands, including tide and submerged lands (Stat. 1921, p. 404, as amended by Stat. 1923, p. 593). In the case of *Boone v. Kingsbury* (273 Pac. 797) the Supreme Court of California upheld the law, stating:

> 'We are satisfied that the State act under consideration is a valid exercise of a right which inheres in the State by virtue of its sovereign power. It does not impinge upon the State or Federal constitutions and is not in conflict with any act of Congress or the State of California.'

"It is probable that the land in question has not been leased by the State because the law referred to provides that no permits or leases shall be granted for tide or submerged lands fronting on an incorporated city or for a distance of 1 mile on either side thereof.

"It is clear that this Department has no jurisdiction. The State of California asserts title to tide and submerged lands under the common law as it has repeatedly been laid down by the Supreme Court of the United States. If any question of title to such lands as between the State of California and the United States is to be tried, it is for the Federal courts.

"Attention may be called to the fact that even if public land were involved no prospecting permit could be granted, because the appellant alleged that the land was within the geologic structure of a producing oil field.

"No useful purpose would be served in any oral hearing before the Department and the request therefor is denied.

"The decision appealed from is

"Affirmed."

On motion for rehearing, the Secretary of the Interior, on November 28, 1934, affirmed his decision of October 4, 1934, as aforesaid. Thereafter, said Cunningham moved the Secretary to exercise his supervisory authority and grant oral argument. In denying said motion, the Secretary, on February 7, 1935, affirmed the prior action rejecting said Cunningham's application, and stated in part as follows:

"It is not questioned that the land lies below the level of ordinary high tide of the Pacific Ocean.

"The application was rejected under a rule of law long ago announced by the Supreme Court of the United States and uniformly applied in subsequent decisions up to recent times, and quoted in the decision of October 4, 1934, as follows:

> *'Upon the admission of California into the Union upon equal footing with the original States, absolute property in, and dominion and sovereignty over, all soils under the tidewaters within her limits passed to the State, with the consequent right to dispose of the title to any part of said soils in such manner as she might deem proper*, subject only to the paramount right of navigation over the waters, so far as such navigation might be required by the necessities of commerce with foreign nations or among the several States, the regulation of which was vested in the General Government.'

"The Department, therefore, has no jurisdiction over the subject matter. This rule is regarded as decisive and binding on the Department. Examination of the motion discloses that it presents nothing new, but under some changes in phraseology its contentions are the same that were fully considered when the

decisions in the case were prepared. As stated in the motion for rehearing, 'In substance, petitioner suggests that we disregard these decisions. We are *not* at liberty to do so.' This is a sufficient and conclusive answer to the matters set up in the motion. No useful purpose would be served by the grant of an oral hearing.

"The motion is without merit and is, therefore, denied."

5. Separate applications were filed July 23, 1934, by W. G. Clark, C. C. Snyder, A. K. Fitz, F. A. Curtiss, G. H. Baad and on August 9, 1934 one was filed by J. G. Conway with the General Land Office seeking oil and gas permits or leases. Each application described a separate parcel of 256 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in the vicinity of Point Mugu in Ventura County, California.

On September 18, 1934, the Commissioner of the General Land Office rejected each of said applications by a written opinion which reads in part as follows:

"In each of the above applications it is alleged that the lands applied for are located under the waters of the Pacific Ocean within the jurisdiction of the Federal Government. While the exact location of the lands has not been definitely ascertained, said tracts appear to be under the tidal waters of the Pacific Ocean.

"The oil and gas leasing act under which the above mentioned applications were filed authorizes the issuance of permits to prospect for deposits of oil and gas in lands where such deposits belong to the United States. The title of the act refers solely to the 'Public Domain' and nowhere in the whole act is there any mention made of lands under tidal waters.

"The words 'Public Domain' are synonymous and equivalent in meaning to the words 'Public Lands,' and these terms have acquired a settled meaning in the legislation of this country (Barker v. Harvey, 181 U. S. 481, 490). The words 'Public Lands' are habitually used in our legislation to describe such as are subject to sale or other disposal under general laws (Newhall v. Sanger, 192 U. S. 761, 763). In order therefore that deposits of oil or gas be subject to appropriation under the oil and gas leasing act, the lands containing such deposits must be, or have been, public lands, subject to appropriation under the general land laws respecting the disposal of the public domain. In Mann v. Tacoma Land Co. (153 U. S. 273-284) the Court said: 'It is settled that the general legislation of Congress in respect to public lands does not extend to tidal lands.'

"Congress has never assumed to enact legislation for the disposal of lands under tidal waters. It was said in Barney v. Keokuk (94 U. S. 324, 338): 'The United States has wisely abstained from extending (if it could extend) its surveys and grounds beyond the limits of high water.' To the same effect, see also Baer v. Moran Brothers Co. (153 U. S. 287).

"From the foregoing, it is clear that the lands for which the applications were filed are not subject to appropriations under section 13 of the act of February 25, 1920. Accordingly, the applications are rejected. * * *"

An appeal was taken by said applicants to the Secretary of the Interior who on February 7, 1935 affirmed the action of the Commissioner rejecting said applications, and stated in part as follows:

"By decision of September 18, 1934, the commissioner of the General Land Office rejected the ap-

plications on the ground that the general leasing act of February 25, 1920 (41 Stat. 437), did not extend to lands under tidal waters, citing the cases of *Barney v. Keokuk* (94 U. S. 324); *Mann v. Tacoma Land Co.* (153 U. S. 273); and *Baer v. Moran Brothers Co.* (153 U. S. 287).

"The applicants filed separate appeals but these are all alike and may be disposed of in one decision.

"It is urged that each area applied for is not privately owned; lies outside or beyond privately owned tide-land shore limits, as defined by court decisions; and is not reserved or excluded under any provision of the act of February 25, 1920, *supra* wherefore said act applies and the permit should be granted under this act.

"The appellants have not satisfactorily made any answer to the decisions of the Supreme Court of the United States cited by the Commissioner.

"In the case of Joseph Cunningham, decided October 4, 1934, (.....I. D.....), *this Department held that California Tide lands were not subject to oil and gas prospecting permits under the general leasing act of 1920.*

"In the case of *United States v. Meadows Imp. Co.* (173 Fed. 426) the court said:

> 'In McCready v. Virginia (94 U. S. 391) it was held that *each state owns the bed of all tide waters within its jurisdiction* and that similarly the states own the tide waters themselves.
>
> 'In Manchester v. Massachusetts (139 U. S. 240, 258), the court in citing the case just referred to, declares that it must be regarded as established that between nations the minimum limit of the territorial jurisdiction of a nation over tide waters is a marine league from its

> coast. Both from the language quoted and from the nature of the decision in the Manchester Case, it seems to me to follow that New Jersey may, in the exercise of its sovereignty, extend its own borders for the space of one marine league from low-water mark and make the region so annexed as much a portion of the state as any other part of its territory.
>
> "That the territorial jurisdiction of the United States extended a marine league from the coast of New Jersey was asserted by the trial court and approved by the Supreme Court in Wilborg v. United States (163 U. S. 632).'

"On May 28, 1929 (Stat. 1929, p. 944), *the State of California passed an act providing that no prospecting permit or lease for oil and gas in tide lands or lands in the bed of the ocean should be granted.* Prior to that time the laws of California provided for the issuance of oil and gas prospecting permits and leases on tide lands and submerged lands. See Stat. 1921, p. 404, as amended by Stat. 1923, p. 593.

"In the case of *Carr v. Kingsbury* (295 Pac. Cal. 586) the Court in considering the cited act of 1929, said:

> 'If the theory of appellant were adopted there would be no tidelands in Huntington Beach to which the terms of the Leasing Act would be applicable, as the city limits extend three miles into the ocean. Tidelands are made such by the water of the ocean flowing over them. Submerged lands are made such by the water standing over them.'

"No authority has been cited for the proposition that the Federal Government owns any part of the bed of the ocean beyond the jurisdiction of the State. In the

case of *Rose v. Himely* (4 Cranch. 241), it was held that after passing the jurisdictional limits of a state, a vessel was as much on the high seas as if in the middle of the ocean. In *Lord v. Steamship Co.* (102 U. S. 541), the court said:

> 'The Pacific Ocean belongs to no one nation, but is the common property of all.'

"It is clear that this Department has no authority to grant oil and gas prospecting permits for tide lands or submerged lands off the coast of California.

"The decision appealed from is affirmed."

6. On August 31, 1934, J. H. Dolan filed an application with the General Land Office for an oil and gas permit or lease covering 120 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On September 6, 1934, A. M. Weirick filed a like application covering 640 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On September 11, 1934, C. W. List filed a like application covering 1600 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On September 13, 1934, P. G. Quinn filed a like application covering 720 acres of submerged lands lying in the Pacific Ocean and Bay of Santa Monica in front of the City of Venice, in the County of Los Angeles, State of California. On September 13, 1934, Clifford Finley filed a like application covering 1280 acres of submerged lands lying in the Pacific Ocean and Bay of Santa Monica in front of the City of Venice.

On October 23, 1934, the Commissioner of the General Land Office rejected each of said applications and in his written opinion of rejection stated in part as follows:

> "The act of February 25, 1920 (41 Stat. 437), provides for the issuance of permits to prospect for oil and gas in land where such deposits belong to the United States or public land subject to appropriation under the general land laws regarding the disposal of public domain which does not include lands under the tidal waters of the Pacific Ocean. *The lands in the bed of the Pacific Ocean and tidal lands along the Pacific coast of California, belong to the State of California by reason of its sovereignty.*
>
> "The records in this office show that the Las Bolsas and La Ballona Rancho Private Land Grants extend to the Pacific Ocean. Patents issued on the Las Bolsas Grants on June 19, 1874 to Ramon Yorka *et al.*, and on August 27, 1877 to Jose Justo Murillo *et al.* The La Ballona Rancho Grant was patented on December 8, 1873, to Augustin Machado *et al.* The patents issued without reservation of the oil and gas deposits to the United States and title to the oil and gas deposits therein vested in the patentees. This office has no jurisdiction over the lands in the private land grants *nor over the lands belonging to the State of California.*
>
> "In view of the foregoing, it appears that the lands embraced in the above listed applications are not subject to appropriation under Sec. 13 of the act of February 25, 1920 (41 Stat. 437). Accordingly, said applications are hereby rejected subject to the applicant's right of appeal herefrom within 30 days from receipt of notice, failing in which their respective applications will be finally rejected and the cases closed without further notice from this office."

An appeal was taken by said applicants to the Secretary of the Interior. On February 21, 1935, said Secretary affirmed the decision of the Commissioner rejecting each of said applications and in his opinion of affirmance stated in part as follows:

> "Separate appeals from the Commissioner's decision were filed, but all the applicants were represented by the same attorney and the appeals are all alike. Furthermore, these appeals are the same as in the case of Joseph Cunningham, represented by the same attorney.
>
> "In the Cunningham Case (A-17958, Los Angeles 051805) there have been three decisions by the Department,—on appeal, October 4, 1934, on rehearing, November 28, 1934, and on petition for the exercise of supervisory authority, February 7, 1935. *That application has been finally rejected.*
>
> "No question has been raised in the appeal as to land within any private land grant. *As to lands covered by tide water and submerged lands in the ocean, the Department has consistently held that it has no jurisdiction.* A request for oral hearing is made, but this is denied on the ground that it would serve no useful purpose.
>
> "The decision appealed from is affirmed."

7. On January 17, 1935, F. Dewart filed an application with the General Land Office for an oil and gas permit or lease covering 2560 acres of submerged lands lying in the Pacific Ocean and Bay of San Pedro in front of the City of Sunset Beach-City of Seal Beach in the Counties of Los Angeles and Orange, State of California. On January 26, 1935 said Dewart filed another application covering 2560 acres of submerged lands lying in the Pa-

cific Ocean and Santa Barbara Channel thereof in front of the City of Carpenteria, in the County of Ventura, State of California. On January 17, 1935, C. P. Ritter filed a like application covering 2560 acres of submerged lands in front of said Sunset Beach-Seal Beach; and on January 26, 1935, filed a like application covering a like area of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the City of Carpenteria. On January 21, 1935, K. Weyant filed a like application covering 2560 acres of submerged lands lying in the Pacific Ocean and Bay of San Pedro in front of said Sunset Beach-Seal Beach.

On April 4, 1935, the Commissioner of the General Land Office rejected each of said applications and in his written opinion of rejection stated in part as follows:

> "The lands described appear to lie in the Pacific Ocean and are described in the application as 'tide lands.' *If the lands lie below the line of ordinary high tide, jurisdiction thereunder is in the State of California which upon its admission to the Union became by virtue of its sovereignty the owner of all the lands extending seaward as far as its municipal domain extends subject to the public right of navigation.*
>
> "You will accordingly notify Dewart that his application is hereby held for rejection subject to his right of appeal within 30 days from receipt of notice hereof."

An appeal having been taken to the Secretary of the Interior by said applicants, a decision was rendered by the Secretary of the Interior, on October 24, 1935, affirming said decision of the Commissioner.

8. On March 6, 1935, O. L. Dillman filed an application with the General Land Office for an oil and gas permit or lease covering 1600 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the City of Santa Barbara.

On September 27, 1935, the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "The land applied for appears to lie in the Pacific Ocean. *If it is below the line of ordinary high tide jurisdiction thereover is in the State of California as upon its admission to the Union it became, by virtue of its sovereignty, the owner of all lands extending seaward so far as its municipal domain extends, subject to the public right of navigation.* Accordingly you will notify Dillman that her application is hereby rejected."

An appeal was taken by said applicant to the Secretary of the Interior, who rendered an opinion on March 12, 1936, affirming said rejection, stating in part as follows:

> "The appeal is without merit. In the case of *Borax Ltd. v. Los Angeles,* decided November 11, 1935 (296 U. S. 10), the Supreme Court of the United States held that tide lands in California belong to the State. The court said:
>
> > 'The controversy is limited by settled principles governing the title to tidelands. The soils under tidewaters within the original States were reserved to them respectively, and *the States since admitted to the Union have the same sovereignty and jurisdiction in relation to such lands within their borders as the original States possessed. Martin v. Waddell,* 16 Pet. 367, 410; *Pollard v. Hagan,* 3 How. 212, 229, 230; *Good-*

title v. Kibbe, 9 How. 471, 478; *Weber v. Harbor Commissioners*, 18 Wall. 57, 65, 66; *Shively v. Bowlby*, 152 U. S. 1, 15, 26. This doctrine applies to tidelands in California. *Weber v. Harbor Commissioners, supra; Shively v. Bowlby, supra*, pp. 29, 30; *United States v. Mission Rock Co.*, 189 U. S. 391, 404, 405. Upon the acquisition of the territory from Mexico, the United States acquired the title to tidelands equally with the title to upland, but held the former only in trust for the future States that might be erected out of that territory. *Knight v. United States Land Assn.*, 142 U. S. 161, 183. There is the established qualification that this principle is not applicable to lands which had previously been granted by Mexico to other parties or subjected to trusts which required a different disposition, —a limitation resulting from the duty resting upon the United States under the treaty of Guadalupe Hidalgo (9 Stat. 922), and also under principles of international law, to protect all rights of property which had emanated from the Mexican Government prior to the treaty. *San Francisco v. Le Roy*, 138 U. S. 656, 671; *Knight v. United States Land Assn., supra; Shively v. Bowlby, supra.* * * *

"It follows that if the land in question was tideland, *the title passed to California at the time of her admission to the Union in 1850. That the Federal Government had no power to convey tidelands, which has thus vested in a State, was early determined. Pollard v. Hagan, supra; Good title v. Kibbe, supra.* * * *'

"The request for oral hearing is denied because such hearing would serve no useful purpose.'

"The decision appealed from is affirmed."

9. On March 8, 1935, J. B. Primm filed an application with the General Land Office for an oil and gas permit or lease covering 1600 acres of submerged land lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the Ellwood oil field in the County of Santa Barbara, California. Said application was rejected by the Commissioner of the General Land Office on October 2, 1935. An appeal having been taken to the Secretary of the Interior by said applicant, the decision of the Commissioner rejecting said application was affirmed by the said Secretary on March 12, 1936.

10. On March 12, 1935, E. L. Stanton filed an application with the General Land Office for an oil and gas permit or lease covering 1400 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the City of Naples, County of Santa Barbara, California. Said application was rejected by the Commissioner of the General Land Office, and in his written opinion of rejection the Commissioner stated in part as follows:

> "The land applied for appears to be in the Pacific Ocean. If it is below the line of ordinary high tide, jurisdiction thereover is in *the State of California, as upon its admission into the Union it became by virtue of its sovereignty the owner of all lands extending seaward so far as its municipal domain extends, subject to the public right of navigation.*
>
> "Accordingly, you will notify Stanton that his application is hereby held for rejection, subject to his right of appeal within 30 days notice hereof, * * *"

11. On March 13, 1935, W. H. Taylor filed an application with the General Land Office for an oil and gas permit or lease covering an area of 500 acres of submerged lands lying in an inlet of the Pacific Ocean in Orange County, California. On November 4, 1935, the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "According to the records of this office the area applied for as described lies in an inlet of the Pacific Ocean, *and since the absolute title to all tide lands on its borders is in the State of California by virtue of its inherent sovereignty* (see Frank Burns, 10 L. D. 365), the Government is without authority to issue an oil and gas permit therefor under the act of February 25, 1920 (41 Stat. 437)."

An appeal was taken to the Secretary of the Interior by said applicant and on February 9, 1936 said Secretary affirmed the decision of the Commissioner rejecting said application, and in his written opinion of rejection stated in part as follows:

> "The Department has had occasion to consider a number of similar applications. In the case of *Joseph Cunningham*, decided October 4, 1934 (55 I. D. .....), the circumstances were almost identical with those herein. The Department held that it had no jurisdiction.
>
> "In the case of *Dean v. City of San Diego* (275 Fed. 228) the court said:
>
> > 'By repeated declarations of our Supreme Court, with respect to lands acquired by the United States and out of which sovereign states of the Union were thereafter created and set up, it has been definitely decided that *lands lying*

> *beneath the navigable waters of the sea* or any of its arms *became the property of such sovereign state adjacent thereto,* subject only to the rights surrendered to the general government through the federal Constitution. *Pollard v. Hagen,* 3 How. 212; *Weber v. Board Harbor Commissioners,* 18 Wall. 57, 65; *City and County San Francisco v. LeRoy,* 138 U. S. 656, 670.'
>
> "It is clear that there is no public land of the United States as applied for, and the application must therefore be rejected."

12. On May 31, 1935, S. K. Strickler filed an application with the General Land Office for an oil and gas permit or lease, the land therein described by metes and bounds lying in the Pacific Ocean. On the same date, W. M. Strickler filed a like application covering 1600 acres of submerged lands lying in the Pacific Ocean. On June 19, 1935, W. M. Strickler filed another like application for a 165-acre parcel of submerged lands lying in the Pacific Ocean. On October 17, 1936, M. S. Stewart filed a like application for a 46-acre parcel of submerged lands lying in the Inner Harbors of Los Angeles and Long Beach. On the same date, F. C. Prescott, III, filed a like application covering a 37-acre parcel of submerged lands lying in the Inner Harbor of Long Beach.

On January 12, 1937, the Commissioner of the General Land Office rejected each of said applications and in his written opinion of rejection stated in part as follows:

> "The land applied for described by metes and bounds appears to be in the Pacific Ocean according to the records of this office. Jurisdiction thereover is not in the United States but in *the State of California as upon its admission into the Union it became, by*

virtue of its sovereignty, the owner of all the lands extended seaward so far as its municipal domain extends subject to the public right of navigation. Permits or leases for said lands therefore could not be issued. See the case of Joseph Cunningham (55 I. D. 1).

"Accordingly you will notify applicants that the applications are hereby held for rejection subject to their right of appeal within 30 days from receipt of notice. * * *."

Appeals were taken by S. K. Strickler and W. M. Strickler and the same have not been acted upon. No appeals were taken by M. S. Stewart or F. C. Prescott III, and the Stewart case has been closed out.

13. On June 28, 1935, Chester Man filed an application with the General Land Office for an oil and gas permit or lease covering a 2560-acre parcel of submerged lands lying in the Pacific Ocean. On September 28, 1935, the Commissioner of the General Land Office rejected said application. Thereafter said applicant filed an appeal with the Secretary of the Interior and said Secretary affirmed the Commissioner rejecting said application.

14. On June 29, 1935, R. J. Clark filed an application with the General Land Office for an oil and gas permit or lease covering an area of 2560 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof near Goleta in the County of Santa Barbara, California. On September 22, 1935, the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

"Said area is submerged and covered by tide water. In a similar application by W. H. Taylor, your series

052415, decided by the Department on January 9, 1935, the Department made reference to the Joseph Cunningham case in which the circumstances were almost identical, and wherein it was held that the Department had no jurisdiction. See 55 I. D. 1, and cited the case of *Dean vs. City of San Diego* (275 Fed. 228), wherein the following was said by the court: [Quoted above in subparagraph 11 of this Paragraph IV.]

"and held that 'it is clear that there is no public land of the United States as applied for, and the application must therefore be rejected.'

"The act of August 21, 1935 (49 Stat. 674), amended the act of February 25, 1920 (41 Stat. 437), so as to authorize the issuance of permits only in cases where applications were filed 90 days or more prior to its enactment, or on or before May 23, 1935, and provided that applications filed after such time shall be considered as applications for leases.

"In view of the above, Clark's application having been filed after May 23, 1935, is considered an application for lease under the amendatory act and is hereby held for rejection in its entirety, subject to his right of appeal within 15 days from receipt of notice hereof, * * *."

On October 13, 1936, an appeal was filed with the Secretary of the Interior by said applicant. Said Secretary affirmed the decision of the Commissioner rejecting said application.

15. On January 16, 1936, C. A. Weigel, G. W. Condon and on February 18, 1936 L. B. Beer each filed separate applications with the General Land Office for oil and gas permits or leases each covering 640 acres of submerged

lands lying in the Pacific Ocean in front of the City of Huntington Beach.

On November 18, 1936, the Commissioner of the General Land Office rejected each of said applications and in his written opinion of rejection stated in part as follows:

> "The land applied for is not subject to lease. In the case of Joseph Cunningham (55 I. D. 1), decided October 4, 1934, the Department held that *the dominion and sovereignty over the soils beneath their tide waters have been reserved to the several states, and that land in the State of California below the line of ordinary high tide is not subject to the issuance of Federal oil and gas prospecting permits, title to said land having passed to the state.*
>
> "Accordingly, you are instructed to notify the applicant that his application is hereby held for rejection in its entirety and that in case of failure to appeal herefrom within thirty days from receipt of notice, * * *."

Appeals were taken to the Secretary of the Interior by said applicants Weigel and Condon. The appeals of C. A. Weigel and G. W. Condon are pending and undetermined by the Secretary. No appeal was taken by said L. B. Beer.

16. On March 7, 1936, H. F. Jones filed an application with the General Land Office for an oil and gas permit or lease covering an area of 300 acres of submerged lands lying in the Pacific Ocean and Long Beach Harbor. On August 27, 1936, J. F. Hurndall filed a like application covering a 61-acre parcel of submerged lands lying in the Inner Harbor of Los Angeles. On August 29, 1936, Clifford Finley filed a like application covering a 67-acre

parcel of submerged lands lying in the Pacific Ocean and Long Beach Harbor. On September 3, 1936, M. W. Purcell filed a like application covering a 99-acre parcel of submerged lands lying in the Inner Harbor of Los Angeles.

Each of said applications was rejected by the Commissioner of the General Land Office. In an opinion dated October 26, 1936, the Commissioner, rejecting said Purcell application, stated in part as follows:

> "However, as the land applied for is below the line of ordinary high tide, jurisdiction thereover is not in the United States, *but in the State of California, as upon its admission into the Union, it became by virtue of its sovereignty the owner of all the lands extending seaward as far as its municipal domain extends, subject to the public right of navigation.* A lease for said lands, therefore, cannot be issued. See the case of Joseph Cunningham (55 I. D. 1).
>
> "Accordingly, you will notify Purcell that his application is hereby held for rejection, subject to his right of appeal within thirty days from receipt of notice."

Under date of October 30, 1936, the Commissioner's written opinion rejecting said J. F. Hurndall application stated in part as follows:

> "The area embraced in this application is submerged and covered by tide water.
>
> "It was held by the Department on January 9, 1936, in the case of a similar application, your series 052415, by W. H. Taylor, that the Department had no jurisdiction over such lands. See Joseph Cunningham (55 I. D. 1). The Department cited the case of *Dean v. the City of San Diego* (275 Fed. 228), wherein the following was said by the court: [Quoted above in subparagraph 11 of this Paragraph IV.]

"In view of the above decision, Hurndall's application is hereby held for rejection in its entirety, subject to his right of appeal within 30 days from receipt of notice, * * *".

Appeals were taken to the Secretary of the Interior by each of said applicants. On April 9, 1937 the Secretary rendered his decision affirming the Commissioner in the said *Hurndall* case and on an application for rehearing again affirmed the Commissioner, rejecting each of said applications, therein stating as follows:

"By separate decisions of October 26 and 30, 1936, the Commissioner rejected the applications on the ground that the lands applied for *were either tide lands or submerged lands over which the State of California had jurisdiction and not the United States.* Each applicant appealed to the Department.

"In the case of Floyd E. Pendell (A. 20447, Los Angeles 052752) numerous affidavits and exhibits were filed which covered the lands here involved. An oral argument was heard on December 22, 1936 in the Pendell case and these applications were made part thereof.

"It will be noted that the Jones application is for land along the shore of the ocean and that the others are for lands in the inner bay. All the lands involved are either tide or submerged lands or they are, or were at the time of survey, marsh or swamp land.

"The situation was very fully considered in the Department's decision of February 4, 1937, in the Pendell case, *supra*. On March 25, the Department denied a petition for the exercise of supervisory authority in

that case. The full records have been given very careful attention. *The Department finds there is no land of the U. S. as applied for, and the applications must therefore be rejected.* The decisions appealed from are affirmed."

17. On March 27, 1936, J. L. Griffith filed an application with the General Land Office for an oil and gas permit or lease covering 350 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On March 23, 1937 the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "By decision of February 7, 1935, in the case of Frederick A. Curtis, *et al.*, Los Angeles 052087-8-9-90-91-116 the Department held that it has no authority to grant oil or gas prospecting permits for tide lands or submerged lands off the coast of California.
>
> "Accordingly you will notify Griffith that unless within 30 days from receipt of notice hereof he appeals herefrom his application will be finally rejected without further notice from this office."

An appeal was taken by said applicant to the Secretary of the Interior. Said appeal has not been determined.

18. On April 11, 1936, T. A. Johnston filed an application with the General Land Office for an oil and gas permit or lease covering 580 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof near Goleta in Santa Barbara County. On Sep-

tember 25, 1937, the Commissioner of the General Land Office rejected said application, stating in part as follows:

> "The tracts described above in Secs. 16, 17, 18, lot 3 in Sec. 20 and lot 1 Sec. 21, were patented to the State of California on March 20, 1929, under the swamp land acts of September 28, 1850 (9 Stat. 519) and July 23, 1866 (14 Stat. 218). As complete title passed from the Government with above patents this office has no jurisdiction over the lands involved. From the records of this office the remaining lands appear to be tide or overflow lands. In the case of Joseph Cunningham (55 I. D. 1) the Department affirmed the decision of this office in which it was held that *if the land is below the line of ordinary high tide jurisdiction thereover is in the State of California as upon its admission into the Union it became by virtue of its sovereignty the owner of all the lands extending seaward as far as its municipal domain extends*, subject to the public right of navigation.
>
> "You will accordingly notify applicant that unless within 30 days from receipt of notice hereof he appeals herefrom his application will be rejected in its entirety without further notice from this office."

Said applicant filed an appeal with the Secretary of the Interior, which appeal has not been determined.

19. On April 17, 1936, G. G. Fisher filed an application with the General Land Office for an oil and gas permit or lease covering a 640-acre parcel of submerged lands lying in the Pacific Ocean and Santa Barbara Chan-

nel thereof in Santa Barbara County. On May 25, 1936, F. E. Pendell filed a like application covering 620 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof near Goleta, Santa Barbara County. On May 27, 1936, L. N. Roach filed a like application covering a 160-acre parcel of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in Santa Barbara County. On June 1, 1936, B. M. Chapman filed a like application covering a 640 acre parcel of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof near Goleta, Santa Barbara County.

On September 8, 1937, the Commissioner of the General Land Office rejected each of said applications, and in his written opinion of rejection stated in part as follows:

> "In the Joseph Cunningham case (55 I. D. 1), the Department affirmed the decision of this office in which it was held that *if the land 'is below the line of ordinary high tide, jurisdiction thereover is in the State of California, as upon its admission to the Union it became, by virtue of its sovereignty, the owner of all lands extending seaward so far as its municipal domain extends,* subject to the public right of navigation.' "

No appeal was filed by any of said applicants within the time allowed therefor.

20. On April 29, 1936, F. E. Pendell filed an application with the General Land Office for an oil and gas permit or lease covering 130 acres of submerged lands

lying in the Pacific Ocean and Bay of San Pedro in Los Angeles Outer Harbor. On May 12, 1936, C. E. Walker filed a like application covering 160 acres of submerged lands lying in the Pacific Ocean and Bay of San Pedro and Outer Harbor of Los Angeles.

The Commissioner of the General Land Office rejected each of said applications on June 25, 1936, and in his written opinion of rejection of the said Pendell application stated in part as follows:

> "On April 29, 1936, Floyd E. Pendell filed an application for lease under the amendatory act of August 21, 1935 (49 Stat. 674), for a tract of unsurveyed land described by metes and bounds and comprising about 130 acres, more or less, lying in the Pacific Ocean southeast of the Rancho San Pedro private land grant in the State of California. Said private land grant was confirmed on December 15, 1858, and the southeastern boundary thereof is the Pacific Ocean.
>
> "The area embraced in Pendell's application being below the line of ordinary high tide as established by the survey of the San Pedro grant, there is no authority to issue a permit for the same. In the case of an application for oil and gas prospecting permit filed by Joseph Cunningham (55 I. D., pages 1 to 3), the Department held as follows:
>
> > 'Absolute property in and dominion and sovereignty over the soils beneath their tidewaters have been reserved to the several states, so that land in the State of California below the line of ordinary high tide is not subject to prospecting under a Federal oil and gas prospecting permit, *title to said land having passed to the state*, subject only to the paramount right of navigation

> over the waters so far as such navigation might be required by the necessities of commerce with foreign nations or among the several states.'
>
> "In view of the above decision, Pendell's application is hereby held for rejection in its entirety, subject to his right of appeal herefrom within fifteen days from receipt of notice hereof."

In his written opinion of rejection, dated June 27, 1936, regarding said Walker application, the Commissioner stated in part as follows:

> "The land applied for appears to be in the Pacific Ocean, according to the plat of the San Pedro Grant, and is below the line of ordinary high tide. Therefore jurisdiction thereover is not in the United States, but *in the State of California, as upon its admission to the Union it became, by virtue of its sovereignty, the owner of all lands extending seaward so far as its municipal domain extends,* subject to the public right of navigation. A permit for said land cannot be issued. See case of Joseph Cunningham (55 I. D. 1)."

An appeal was taken by Pendell to the Secretary of the Interior. Said Secretary, on September 25, 1936, affirmed the Commissioner in rejecting said application and stated in part as follows:

> "The applicant appealed on the following grounds:
>
> "1. That all minerals on the floor of the ocean and underneath the floor of the ocean belong to the sovereign people of the United States;
>
> "2. That the Commissioner failed and refused to grant the request for a survey;
>
> "3. That the Commissioner rejected the application without permitting the appellant to establish the facts as he had offered to do, and denied him a hearing on his application.

"*If the land involved is covered by the waters of the ocean, or is tide land, the United States has no title and said land is not subject to oil and gas prospecting permit.* In addition to the case cited by the Commissioner the case of *Borax Consolidated, Ltd. v. Los Angeles* (296 U. S. 10), may be cited.

"The plats of the General Land Office show that the boundary line of the Rancho San Pedro is the Pacific Ocean, and consequently the land applied for is in the ocean.

"The appellant has offered no evidence in support of his assertion that the land involved is not covered by the ocean and is not tide land, but part of the public domain. If that were so there should be some reasonable explanation why it had been omitted from the surveys of public lands. Without any evidence in support of allegations made there is no warrant for any investigation with a view to survey, or for the ordering of a hearing.

"The decision appealed from is affirmed."

Said Pendell moved for a rehearing before the Secretary. A rehearing was granted, oral arguments were heard by the Secretary and numerous affidavits and exhibits were filed with the Secretary by Pendell. On rehearing, an elaborate opinion, dated February 4, 1937, was prepared by the Secretary affirming the Commissioner and rejecting said application. In his opinion on rehearing, the Secretary stated in part as follows:

"A minor contention is made that even if the lands are so situated as to be in the class of tide lands, *nevertheless the mineral deposits therein belong to the United States. This contention must be rejected as untenable*, as repeatedly held by the Department and the courts. *Joseph Cunningham* (55 I. D. 1); *Borax*

Consolidated, Ltd. v. Los Angeles (296 U. S. 10), the latter involving lands in Los Angeles Harbor.

"The main contention is based on the theory that large areas of land above mean high tide exist, and existed at the time of the survey of Rancho San Pedro, between the ocean and the survey lines of the said grant, and that it was not intended that said omitted areas be included in the grant as surveyed and patented. Numerous affidavits designed to support this contention have been filed. Several of them merely state that the lands have been above high tide for many years. These, of course, have no material value, considering the fact that the grant was surveyed in 1857, and the further acknowledged fact of changes made since then by extensive dredging and filling operations in connection with the development of Los Angeles Harbor. In the interpretation of the survey it is necessary to consider conditions as they existed at the time the survey was executed.

"Certain other of the affidavits, however, are more to the point in that they assert that some parts of the land have been above high tide for many centuries. The material portions of these affidavits are incorporated in this decision for ready reference in the consideration of the case.

* * * * * * * *

"The claim of Pendell (130 acres) together with the claim of Jones (300 acres) and the claim of Walker (160 acres) is outlined on a chart of the Coast and Geodetic Survey of the date of April, 1935. The three claims combined, as there depicted, comprise an area of 590 acres extending along the shore of the Pacific Ocean for a distance of more than three miles, with a minimum width of about 10 chains to a maximum width of about 39 chains. This area is supposed to represent high land between the high water

line of the ocean and the meander line of the survey of the San Pedro Grant.

* * * * * * * *

"The affidavits themselves go far toward explanation of the changes that have taken place in this area, and the charts submitted by the General Land Office demonstrate beyond reasonable doubt that no substantial areas of the lands embraced in the application were of such size or character as to justify a ruling that title thereto remains in the United States. The survey called for a line "along high water mark of the ocean." Even if some areas were above high tide but were swamp or marsh land, as indicated in some of the affidavits, they were probably of the character which would entitle the State to claim them under the swamp land grant, and it has been held that mineral lands are not excepted from the swamp land grant. See *Work v. Louisiana* (269 U. S. 250). Furthermore, even if some projections of high dry lands were left between the meander line and the ocean, that would afford no reason for the Government to claim such areas as public lands in the absence of fraud or gross error in the survey. Meander lines of bodies of water are not run as boundaries of title, but in order to show the approximate location of the water which bounds the lands granted, and to furnish the basis for calculation of the approximate area granted.

* * * * * * * * *

"It has not been shown that there was any material error in meandering the ling of mean high tide in the survey of the Rancho San Pedro as claimed by applicant, and the motion is accordingly denied."

Said Pendell thereafter filed a petition requesting the Secretary of the Interior to exercise his supervisory power

and reconsider said application. On March 25, 1937, the Secretary rendered an opinion denying said petition for the exercise of supervisory authority and affirmed the decision of the Commissioner rejecting said application. In said opinion of March 25, 1937, the Secretary stated in part as follows:

> "The grounds of the rejection were that the survey of the patented Rancho San Pedro called for the Pacific Ocean and that *any land below mean high tide passed to the State and could not be treated as public land of the United States.*"

21. On August 17, 1936, C. B. Reynolds, Jr., filed an application with the General Land Office for an oil and gas permit or lease covering 640 acres of submerged lands in the Pacific Ocean in front of the City of Huntington Beach. On the same date said Reynolds likewise filed a similar application covering 640 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of Elwood, Santa Barbara County. On August 17, 1936, Myrtle A. McCurry filed an application with the General Land Office for an oil and gas permit or lease covering 640 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On the same date, C. B. Reynolds, Jr., filed a like application covering 640 acres of submerged lands lying in the Pacific Ocean and Santa Barbara Channel thereof in front of the City of Santa Barbara. On the same date, L. J. Chambard filed a like application covering 640 acres of submerged lands lying in the Pacific Ocean and San Pedro Channel thereof and Bay of Santa Monica in front of the City of Venice in Los Angeles County, California. On the same date, D. W. Churchill filed a like application cover-

ing 640 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach.

On October 27, 1936, the Commissioner of the General Land Office rejected each of said applications and his written opinion of rejection stated in part as follows:

> "The areas embraced in the above described applications are submerged and covered by tide water.
>
> "It was held by the Department on January 9, 1936, in the case of a similar application, your series 052415, by W. H. Taylor, that the Department had no jurisdiction over such lands. See Joseph Cunningham (53 L. D. 1). The Department cited the case of *Dean v. the City of San Diego* (275 Fed. 228), wherein the following was said by the court: [Quoted above in subparagraph 11 of this Paragraph IV.]
>
> "and held that 'It is clear that there is no public land of the United States as applied for, and the application must therefore be repected.'
>
> "In view of said decision, the above applications are hereby held for rejection, subject to the applicant's right of appeal within thirty days from receipt of notice."

Appeals were filed with the Secretary of the Interior covering said applications, and on January 13, 1937, the Secretary affirmed the Commissioner in rejecting each of the applications Nos. 052791, 052794 and 057295 of C. B. Reynolds, Jr., Nos. 052792, 052793 and 052796 of Myrtle A. McCurry, Nos. 052797, 052799 and 025801 of D. W. Churchill, and Nos. 052798, 052800 and 052802 of L. J.

Chambard. In his formal opinion of rejection (56 I. D. 60, 61) the Secretary stated in part as follows:

"The stated grounds of appeal are in substance as follows:

"The important question of ownership of valuable mineral rights in lands beneath the Pacific Ocean, below the line of low tide off shore from Southern California, title to which has not yet been determined by any Federal Court, is involved.

"The right to minerals by the laws of Spain remained in the Crown, were retained by Mexico while she was sovereign of this territory, and passed to the United States with the territory of California.

"The long-established mineral policy of the United States sustaining its mineral rights as a separate property with specific requirements for their acquisition is being violated.

"It was early spelled out by judicial construction that the separate title to all minerals within the public domain is retained by the United States, and this has been adhered to in a long line of decisions and is too firmly intrenched to be changed save by legislative action.

"Decisions of the Supreme Court of the United States cited in rejection of the applications are based on the act admitting California into the Union on an equal footing with the thirteen original States. The title to minerals in tidelands is not discussed.

"In the case of *Borax, Ltd. v. Los Angeles*, 296 U. S. 10, the Supreme Court of the United States, speaking through Chief Justice Hughes, said: [Quoted above in subparagraph 8 of this Paragraph IV.]

"*Title to the lands involved passed to the State of California in 1850.* There was then no provision of

law for reserving possible mineral deposits. There was no established mineral policy of the United States. In this connection see the case of *Work v. Louisiana*, 269 U. S. 250.

"The decisions appealed from are affirmed."

22. On August 17, 1936 and August 29, 1936 five applications were filed with the General Land Office, two by Myrtle A. McCurry and one each by D. W. Churchill, L. J. Chambard and Clifford Finley, for oil and gas permits or leases, each covering 640-acre tracts of submerged lands lying in the Pacific Ocean and Santa Barbara Channel or San Pedro Channel thereof, one in front of Elwood, Santa Barbara County, one in front of the City of Santa Barbara, one in front of the City of Venice, Los Angeles County, and the balance in front of Seacliff, Santa Barbara County.

On October 26, 1936, the Commissioner of the General Land Office denied each of said applications and in his written opinion of rejection stated in part as follows:

"Reference is made to the following oil and gas lease applications filed in your office under the amendatory act of August 21, 1935 (49 Stat. 674):

"Serial "Number	Name	Date
"052793	Myrtle A. McCurry	August 17, 1936
"052796	Myrtle A. McCurry	August 17, 1936
"052799	Douglas W. Churchill	August 17, 1936
"052802	Lemoyne J. Chambard	August 17, 1936
"052804	Clifford Finley	August 29, 1936

"The land applied for, described by metes and bounds, appears to be in the Pacific Ocean, according to the plat of the San Pedro grant, and is below the

line of ordinary high tide. Jurisdiction thereover is not in the United States, but *in the State of California, as upon its admission into the Union it became, by virtue of its sovereignty, the owner of all lands extended seaward so far as its municipal domain extends,* subject to the public right of navigation. A lease for said land, therefore, could not be issued. See the case of Joseph Cunningham (55 L. D. I.)."

Appeals were filed by each of said applicants with the Secretary of the Interior and said Secretary affirmed the Commission in rejecting each of said applications in his formal opinion reported in 56 I. D. 60, above quoted.

23. On August 17, 1936, D. W. Churchill filed an application with the General Land Office for an oil and gas permit or lease covering 640 acres of submerged lands in the Pacific Ocean and Santa Barbara Channel thereof lying in front of Seacliff in the Rincon oil field area. On October 26, 1936, the Commissioner of the General Land Office rejected said application and his opinion of rejection stated in part as follows:

"The land applied for appears to lie in the Pacific Ocean and below the line of ordinary high tide. Accordingly, jurisdiction thereover is not in the United States but in the State of California, as upon its admission into the Union, it became by virtue of its sovereignty the owner of all the lands extending seaward as far as its municipal domain extends, subject to the public right of navigation. A lease for said lands, therefore, cannot be issued. See the case of Joseph Cunningham (55 I. D. 1)."

Appeal was filed by said applicant with the Secretary of the Interior and said Secretary affirmed said applica-

tion in his formal opinion reported in 56 I. D. 60 above quoted.

24. On August 17, 1936, L. J. Chambard filed another application with the General Land Office for an oil and gas permit or lease covering 640 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On October 31, 1936, the Commissioner of the General Land Office rejected said application with a written opinion similar to his ruling of September 26, 1936, set forth hereinabove. An appeal was filed by said applicant on December 4, 1936, with the Secretary of the Interior. Said Secretary affirmed the Commissioner in rejecting said application in the formal opinion reported in 56 I. D. 60, quoted above.

25. On March 9, April 6, April 19, May 6, and May 25, 1937, six applications for oil and gas permits or leases were filed with the General Land Office, three by R. E. L. Jordan, one by R. E. L. Jordan, Jr., one by Earl Brown, and one by F. J. Olson, describing many thousands of acres of submerged lands lying in the Pacific Ocean and Bay of San Pedro in front of the City of Long Beach and in the Pacific Ocean in front of the City of Huntington Beach. On June 8, 1937, and on July 20, 1937, the Commissioner of the General Land Office rejected each of said applications and in written opinions of rejection stated in part as follows:

> "April 6, 1937, Robert E. Lee Jordon filed oil and gas lease application, Los Angeles 052976, for certain submerged land lying in the Pacific Ocean between the tide lands and the three mile limit off the shores of the State of California.
>
> "By decision of February 7, 1935, in the case of Frederick A. Curtiss, *et al.*, Los Angeles 052087-8-9-

90-91-116, the Government held that it has no authority to grant oil or gas prospecting permits for tide lands or submerged lands off the coast of California.

"Accordingly, you will notify Jordan that unless within 30 days from receipt of notice hereof he appeals, his application will be finally rejected in its entirety without further notice from this office."

In his written opinion of rejection of the other of said applications, the commissioner said in part that:

"Oil and gas lease applications under above serial numbers filed by F. J. Olson on May 6 and R. L. Jordan, Jr., on May 25, and Earl Brown May 25, 1937, respectively, have been received in this office.

"The above applications embrace submerged lands in the Pacific Ocean lying off the coast of California and in each case the applicant has furnished power of attorney to Robert E. Lee Jordan and requested that all notices be sent to him at 3916 Ardmore Street, South Gate, California.

"These applications are hereby denied. See the case of Frederick A. Curtiss *et al.*, Los Angeles 052087-8-9-90-91-116, wherein by decision of February 7, 1935, the Government held that it has no authority to grant oil or gas prospecting permits for tide lands or submerged lands off the coast of California."

Appeals were taken to the Secretary of the Interior by each of the applicants and said appeals have not been determined.

26. On April 20, 1937, David Romey and R. L. Jordan, Jr., filed an application with the General Land Office for an oil and gas permit or lease covering 1080 acres of submerged lands adjoining the San Pedro Breakwater in the Pacific Ocean and Bay of San Pedro. The Commissioner of the General Land Office on June 2, 1937, rejected said application and his opinion of rejection stated:

> "April 20, 1937, David Romey and R. L. Jordan, Jr., filed application under above serial number for oil and gas lease for certain lands described by metes and bounds which appear to be submerged lands under the Pacific Ocean and off the coast of California.
>
> "By decision of February 7, 1935, in the case of Frederick A. Curtiss *et al.*, Los Angeles 052087-8-9-90-91-116, the Department held that it has no authority to grant oil or gas prospecting permits for tide lands or submerged lands off the coast of California.
>
> "Accordingly you will notify Jordan that unless within 30 days from receipt of notice hereof, he appeals herefrom his application will be finally rejected without further notice from this office."

Appeals were taken by said applicants which appeals have not been determined.

27. On June 26, 1937, E. J. Preston filed an application with the General Land Office for an oil and gas permit or lease covering 2443 acres of submerged lands lying in the Pacific Ocean in front of the City of Huntington Beach. On September 21, 1937, the Commissioner of the

General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "In the case of Joseph Cunningham (55 I. D. 1), the Department affirmed the decision of this office, in which it was held that if the land applied for is below the line of ordinary high tide, jurisdiction thereof is in the State of California, *as upon its admission to the Union it became by virtue of its sovereignty the owner of all the lands extending seaward, so far as its municipal domain extends,* subject to the public right of navigation."

Said applicant filed an appeal with the Secretary of the Interior, which appeal has not been determined.

28. On July 9, 1937, R. E. L. Jordan filed an application with the General Land Office for an oil and gas permit or lease covering 1525 acres of submerged lands lying in the Pacific Ocean and Bay of Santa Monica in front of the City of Redondo Beach. On September 16, 1937, the Commissioner of the General Land Office rejected said application and in his written opinion of rejection stated in part as follows:

> "In the case of Joseph Cunningham (55 I. D. 1), the Department affirmed the decision of this office in which it was held that if the land is below the line of ordinary high tide jurisdiction thereover is in the State of California, *as upon its admission into the Union it became by virtue of its sovereignty the owner of all the lands extending seaward so far as its municipal domain extends* subject to the right of navigation."

An appeal was taken by said applicant to the Secretary of the Interior and said appeal has not been determined.

V.

By the War Department, Navy Department, and Officers Thereof.

The War Department, the Secretary of War, the Chief of Engineers of the United States Army, the Board of Engineers for Rivers and Harbors, the District Engineer Office, the Navy Department and officers thereof, have, over a period of many decades, ruled, declared and reported, pursuant to requirements of Acts of Congress, that the State of California and its grantees, respectively, are the owners of the tide and submerged lands lying within the boundaries, borders and limits of the State. Among these declarations, rulings and reports are the following:

1. The War Department, through its Corps of Engineers and the United States Engineer's Office, filed 17 different maps with the Surveyor General of the State of California and with the several county offices in said State, depicting various areas of submerged lands lying in the Pacific Ocean, as well as lying in the entrance to the bays and in the harbors of the State of California, filed pursuant to the Act of March 9, 1897, whereby the State of California granted to the United States parcels of submerged lands extending 300 yards beyond low water mark around military and naval reservations and islands. The details of these maps prepared and filed by the War Department, as aforesaid, is more particularly set forth in Paragraph A-I of this Second Affirmative Defense.

On March 25, 1906, the Secretary of War denied an application for a permit of Randolph H. Miner to con-

struct a bulkhead and fill in certain submerged lands in the Pacific Ocean and Bay of San Pedro. On March 11, 1906, the Chief of Engineers of the United States Army reported in writing to the Secretary of War concerning the aforesaid application of Randolph H. Miner, and there stated in part as follows:

> ". . . . approval of which (application) was denied on the ground that the fill contemplated behind the bulkhead would occupy *certain lands under water granted to the United States by the State of California* [under said Act of March 9, 1897] . . . . This action was taken after reference of the matter to the Judge Advocate General."

2. The Secretary of War reported to Congress, in the year 1924, the grant by the State of California to the United States made by said Act of the Legislature of March 9, 1897, of a parcel of submerged lands 300 yards wide around Deadman's Island in the Pacific Ocean and Bay of San Pedro, and stated in part as follows:

> "By Act of the Legislature, *the State of California granted to the United States parcels of land extending from high water mark out to 300 yards beyond low water mark* lying adjacent and contiguous to such lands of the United States . . . The United States has claim to land of approximately 36 acres around Reservation Point and lying easterly of the probable 1000 foot channel."

3. In a report dated September 30, 1924, the Commandant of the Eleventh Naval District of the United States Navy Department reported to the Chief of Naval Operations on the necessity for acquiring title from the State of California to tide and submerged lands lying along the shore of and in the Pacific Ocean adjacent to

North Island in San Diego County, California, and there stated in part as follows:

> "There are other tide lands adjacent to North Island to which the Government should secure title. *These are the tide lands along the Ocean front.* At the present time *title to these lands lies with the state* and technically therefore the Government does not have control of the beach. The description of these lands is as follows:"
>
> [Setting forth the description of tide and *submerged* lands extending out to the pierhead line *in the Pacific Ocean as the same may thereafter be established by the Federal Government.*]

4. The War Department, through its District Engineer Office, on March 27, 1941, wrote to the State of California requesting that the State Legislature be requested to authorize a grant to the United States of a 32.8 parcel of submerged lands lying in the Pacific Ocean in San Diego County, in exchange for a like parcel of tide and submerged lands lying in the Bay of San Diego and acquired by the United States from the State of California under said Act of March 9, 1897. In said communication the War Department there stated in part:

> "This proposed plan is for the United States to convey to the State of California all property contained in the Military Reservation known as 'Coronada Beach', in exchange *for an equivalent area of state land on the ocean side* of Silver Strand opposite said Military Reservation . . . *It is understood that conveyance of state lands is made only by an Act of the State Legislature.*"

5. The War Department through its Chief of Engineers reported to Congress (1887 Annual Report, Chief of Engineers, United States Army, Part 3, pages 2447-48) with respect to a 24.25 acre tract of tide and submerged lands lying in the Pacific Ocean at the entrance to Humboldt Bay, California, title to which was sought to be granted to the United States by Act of the Legislature of the State of California, that:

> "An assistant was accordingly sent to Humboldt Bay, who, . . . made careful plats connected with the land office surveys of land required above high water mark and the tide-lands adjoining, *the title to which was vested in the State of California.*"

6. The War Department, through its United States District Engineer and Chief of Engineers, reported to Congress in the year 1924, in House Document 349, 68th Congress, First Session, pp. 46-47, and in recommending an appropriation by Congress for improvement of the Los Angeles, Long Beach Harbors, referred to submerged lands lying in the Pacific Ocean and Bay of San Pedro in front of Terminal Island then being reclaimed by said parties, and stated as follows:

> "All land on the south shore of Terminal Island can be reclaimed very cheaply as incident to dredging operations in the inner harbors. Between Fish Harbor [on the Ocean side of Terminal Island in the City of Los Angeles] and the silt diversion channel [being the easterly boundary of the Long Beach Outer Harbor] under protection of the breakwater extension, *perhaps 1000 acres could be so reclaimed.* A reasonable estimate of the value of such land is $25,000 per acre, or an aggregate of $25,000,000 for the 1000 acres. *Title to this valuable frontage would rest in the Cities of Los Angeles and Long Beach.*"

7. In the year 1930 the Board of Engineers for Rivers and Harbors of the United States War Department, prepared and published a written report entitled "THE PORTS OF LOS ANGELES AND LONG BEACH, CALIFORNIA." Said report was prepared pursuant to the requirement of the Act of Congress known as The Transportation Act of 1920, Section 500. Said report stated in part as follows:

> "Los Angeles Harbor has approximately 40 miles of water front. Out of a total of 66,446 linear feet of improved wharf frontage, *44,582 linear feet are owned by the City of Los Angeles* and operated by its Board of Harbor Commissioners, while the remainder, or 21,864 linear feet are owned or controlled by various commercial concerns.
>
> "*The City of Los Angeles administers 1581 acres of tide land of which 916 acres have been reclaimed.*
>
> "Under the law *tide lands cannot be sold*, but under certain conditions may be leased for not to exceed 30 years for industrial and commercial pursoses, such leases providing for a rental adjustment at the end of each 10-year period.
>
> "Revocable permits are under certain circumstances issued for other purposes, usually limited to smaller areas and for 30 days.
>
> "The following *schedule of rental for tide lands was adopted by the Board of Harbor Commissioners in 1923*. A readjustment schedule of rents for large industrial areas is applied when other revenue such as wharfage or dockage will accrue to the city from such a lease."

By said report entitled "THE PORTS OF LOS ANGELES AND LONG BEACH, CALIFORNIA," the Board of Engi-

neers for Rivers and Harbors reported, with respect to the Long Beach Harbor, in part, as follows (p. 182):

> "Approximately 95% of the water front in Long Beach Inner Harbor is privately owned, *while that in the outer harbor is municipally owned.*"

8. In a report prepared in 1939 by the Board of Engineers for Rivers and Harbors, United States War Department, and by the United States Maritime Commission, entitled "THE PORTS OF SAN FRANCISCO, OAKLAND, ALAMEDA, RICHMOND AND UPPER SAN FRANCISCO BAY, CALIFORNIA," made pursuant to Section 500 of the Transportation Act and Section 8 of the Merchant Marine Act, it is reported (p. 17) as follows:

> "The harbor front of San Francisco is owned by the public, *title being vested in the State of California.* The jurisdiction of the board of State harbor commissioners covers that portion of the water front on San Francisco Bay from the Presidio around the Bay front to the boundary line between San Francisco and San Mateo Counties, a distance of approximately 10 miles. The principal terminal development has been in the 7-mile portion lying between the Army transport docks at Fort Mason and Hunters Point, about 5½ miles of which has been extensively developed. The Embarcadero, a 200-foot thoroughfare, *owned and maintained by the State,* runs along the water front adjacent to the piers, the wholesale and shipping district, and numerous industries from Hyde Street to the channel.

"The land area under the jurisdiction of the board of State harbor commissioners comprises 1,912 acres, consisting of *105 acres of seawall lots and other reclaimed lands,* 204 acres in the Embarcadero and other streets, *491 acres of submerged land* inside the seawall line, and *1,112 acres of submerged land between* the seawall and the pierhead line. The area of the piers and wharves *owned by the board* totals 195.62 acres, including 119.18 acres of covered and 76.44 acres of uncovered area. Of the covered area 7.54 acres are on upper floors and of the uncovered, 1.61 acres."

In said 1939 Report, The Board of Engineers for Rivers and Harbors and the United States Maritime Commission, with respect to the City of Oakland (p. 134 of said 1939 Report) stated:

"*On May 1, 1911, the legislature of the State of California granted to the city of Oakland all its right and title to the tideland* lying south of the southerly line of East Fourteenth Street and east of the easterly boundary line of the city of Oakland. By negotiation and compromise with private interests the city has gained title to nearly all of the important water-front property, and *now owns approximately two-thirds of the 21.3 miles of water frontage included in the port area.* As stated in the preceding paragraph, there is a total of 28 piers and a yacht harbor *on city-owned property,* 11 of which are leased to private interests. *Approximately 1,000 acres of land suitable for industrial development is*

owned by the municipality and under the jurisdiction of the board of port commissioners."

9. By an Act of Congress approved August 29, 1916, the President was authorized to appoint a commission of five naval officers to investigate and report as to the necessity, desirability and advisability of establishing an additional navy yard or naval station on the Pacific Coast of the United States. It was provided in said Act that if such a navy yard or naval station should be recommended, said report should designate the most suitable site and the estimated cost thereof, together with a statement of the reasons for such designation. Pursuant to the provisions of said Act, the President of the United States appointed a Commission on Navy Yards and Naval Stations, which Commission submitted six reports which are embodied in House Document No. 1946, 64th Congress, 2d Session. A substantial portion of said report was devoted to a consideration of various sites in and around the Bay of San Francisco which had been proposed for the location of a navy yard or naval station. There was attached to and made a part of Part 2 of said report a map of the San Francisco Bay Region on which were designated the proposed sites considered by said Commission.

Said map is entitled "San Francisco Bay, California" and bears the legend "Published at Wasington, D. C., July 1910; reissued Dec. 1916 by the U. S. Coast and Geodetic Survey." A photostatic copy of said map is set forth as follows:

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CALIFORNIA

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The proposed sites considered by said Commission for a navy base or a naval station are designated on the foregoing maps by the same numbers which are used in referring to such sites in the text of said report.

(a) In describing and comparing certain of the various San Francisco Bay Region sites, said Commission on Navy Yards and Naval Stations stated in Part 2 of its report as follows:

1. "Site No. 1—Hunters Point (Point Avisadero).

"122. This is the site formally presented for consideration by the city and county of San Francisco, at a hearing held in City Hall, San Francisco, December 11, 1916, a copy of which is attached as Appendix M. During the past 10 years many reports have been made to the Navy Department on the advantages of this site for a Government docking and repair plant on deep water. It consists of any portion or all of the rocky peninsula that *extends out to deep water in the bay about 6,000 feet,* and has an average width of 2,000 feet; and *also of the adjacent tide and submerged land lying north and south of Hunters Point between the shore and the bulkhead line,* and having the following acreage:

	Private ownership— Acres	Owned by City— Acres	Total Acres
Zone A, submerged land north of Hunters Point	94	84	178
Zone B, upland of Hunters Point north of the center ridge	83	52	135
Zone C, upland of Hunters Point south of the center ridge	88	53	141
Zone D, submerged land south of Hunters Point as far as South Basin	259	169	428
Zone E, submerged land between South Basin and the county line	345	218	563
Total	869	576	1,445

* * * * * * * *

". . . Hunters Point is a hill of soft rock with a ridge or backbone running out to the point approximately along the middle that has an elevation of from about 150 to 200 feet. There is very little level or moderately sloping ground. It has not been divided into streets on the ground, *but practically all the lots, both upland and submerged, are held in private ownership. There are some 2,000 parcels of land. The city owns all the land that has been reserved for streets.* Along the bulkhead line, the *State of California has also reserved and owns a recessed area, just north of the point, called India Basin, and one on the south called South Basin,* that are not included in the foregoing acreage." (Pages 50-51.)

On page 52 the Commission referred to certain communications from private individuals and civic officials with reference to the cost and extent of the land around Hunters Point and in conclusion it was said on page 53:

"127. From the foregoing it is seen that out of the total acreage for upland and *submerged land* of 1,445 acres, *the city will donate 576 acres to the United States without* cost, and that, in the judgment of the mayor, the average price for the remaining 869 acres should be between $1,000 and $1,200 an acre."

2. "Site No. 2—Visitation Valley.

"128. This is an area of about *500 acres of tide and submerged land* in San Mateo County, about 2 miles south of Hunters Point, with a shore frontage of about 3,700 feet *and extending out into the water about 6,000 feet.* A dredged channel about 2 miles long would be necessary to give access to deep water (40 feet. * * * This site is less advantageously placed than site No. 1, and the value of the land as given is higher. *It could be developed more economically if distant from shore several thousand feet, where less dredging to deep water would be necessary and where the State owns the land,* which would obviate the purchase of most of the private land which has been offered. This site is appreciably less desirable than site No. 1, but has the advantage of much greater proximity to deep water than the other sites farther south. This site will not be included in making final comparison." (Page 53.)

3. "Site No. 6—San Leandro Bay.

"* * * * * * * *

"The Oakland Chamber of Commerce, acting in conjunction with the Fitchburg Social and Improve-

ment Club, has submitted a proposition covering about 742 acres, or any part thereof, fronting on San Leandro Bay. *About 200 acres consists of low-lying bay-shore lands and the remainder is tide and submerged land.*" * * * (Page 55.)

4. "Site No. 7—Alameda.

"135. *This site consists largely of submerged land in shallow water* and lies in the bay immediately west of Alameda and south of the Alameda Mole that protects the entrance to Oakland Harbor. It is really an alternate to San Leandro Bay site No. 6; that is, instead of dredging a channel to San Leandro Bay, it is as though that site had been moved over 6 (statute) miles to the northwest out near deep water. * * * *Three years ago, the State of California granted the city of Alameda in trust, a portion of the land included in this site, amounting to 864 acres of land lying between the shore and the pier head line,* with the proviso that the city spend $200-000 to develop the area within five years. No expenditures have yet been made. *About one-half of site No. 7 lies in this area, and the remainder occupies land outside of it that is owned by the State.*

* * * * * * * *

"In reply to an inquiry addressed the mayor of Alameda, *asking if the city is willing to grant to the United States the use of such of its tide and submerged land as may be required,* a favorable reply, dated January 18, 1907, was received, which is attached as Appendix N, and which stated that the city would cooperate with the National Government in every way. A resolution to this effect, as passed by the city council on January 16, is also attached as Appendix N, part 2. * * *." (Pages 55 and 56.)

5. "Site No. 9-A—Oakland.

"139. *This site has been offered by the owner, Mr. F. M. Smith, of Oakland, and consists of 553 acres of tideland and submerged land on the shore of Berkeley* immediately north of the Key Route trestle and fill. To even up the outside boundary line, *Mr. Smith proposes that 150 acres of submerged land, owned by the State, be also considered as a part of this tract,* making a total area of 703 acres. * * *"

6. "Site No. 9-B—Oakland.

"140. This is an alternate to site No. 9-A and bears a relation thereto, somewhat similar to the relation of site No. 7 to site No. 6. Site No. 9-B consists of an unlimited *tract of submerged land* lying immediately north of the outer end of the Key Route trestle and fill, and west of No. 9-A. *The land is owned by the State and would be obtainable without cost.* Permission would have to be obtained from the War Department to fill outside of the established bulkhead line. * * *"

7. "Site No. 10-A. Richmond-Albany.

"141. This site, on the east shore of the bay, has been presented for consideration by the cities of Berkeley, Albany, and Richmond, and *consists of any portion of a tract of about 1,972 acres held in private ownership* by a number of individuals and corporations, and *of which 1,520 acres are tide and submerged land,* 66 acres are marsh, and 386 acres are upland." (Pages 57 and 58.)

"* * * * * * * *

"By resolution No. 905, passed by the council on January 15, 1917, and by resolution No. 110, passed by the trustees on January 8, 1917, copies attached as Appendix O, parts 6 and 7, *Richmond and Albany, respectively, expressed their willingness to cede any interests they have in tidelands adjacent thereto to the United States* for naval purposes without cost." (Page 59.)

8. "Site No. 10-B—Richmond-Albany.

"146. This is the same layout as site No. 10-A, except that the latter is moved out to the vicinity of deep water, as shown on chart No. 5532 (Appendix L). *In this location the land belongs to the State* and no purchase would be necessary. The consent of the War Department would have to be obtained to fill in outside of the bulkhead line. The amount of dredging would be much less for site No. 10-B than for site No. 10-A. The island formed by the fill could be connected with the shore by a trestle or mole. This site would have the disadvantages of being more difficult of access, and of being more remote from centers of labor and material, than 10-A." (Page 60.)

9. "Site No. 14.—El Campo (California Point).

"156. This site is in Marin County on the west shore of the bay, just north of the naval coaling plant, and lies between Point Chauncey and California Point. It includes any part of about 1,034 acres of upland and *160 acres of tide and submerged land.* The upland rises sharply from the shore to an elevation of from 400 to 600 feet and it is probable that not more than about 50 acres of it could be made use-

ful by grading. The tide lands average 3 or 4 feet below low water, and extend along the shore a distance of about 10,000 feet. . . .

"157. *The price asked for the tide lands alone is $650 per acre,* and the price asked for the 1,194 acres of tide land and upland is $664,938, or an average price of about $650 per acre. The great advantage this site possesses is proximity to deep water. The 40-foot contour comes up close to the shore for over two-thirds of its length, and is readily obtainable with very little dredging for the remainder. The value of this is diminished, however, by the comparatively small amount of submerged land capable of reclamation and upland available for grading adjacent thereto. . . ." (Page 64.)

10. "Site No. 16—Richardson Bay.

"160. Richardson Bay is a shallow body of water of irregular shape that opens off from the north side of the Golden Gate and lies between Tiburon and Sausalito Peninsulas. The surrounding hills rise quite sharply from the water's edge, and there is very little of the upland that could be graded economically for industrial purposes. This land, which has been offered to the Navy as an advantageous location for a docking and repair yard, training station, and naval academy by Mr. A. H. Thompson of Sausalito, several times during the past few years, consists of any portion of about 2,262 acres, *of which about 1,400 acres are tide and submerged land* and the balance upland. *One thousand and sixty-five acres of this tideland* and 767 acres of upland *are held in private own-*

ership by different parties, and a uniform price of $650 per acre has been placed thereon. . . ." (Page 65.)

(b) In Part 5 of its report (submitted at a later date than was Part 2 referred to above) said Commission on Navy Yards and Naval Stations gave further consideration of certain of the sites referred to above. One of the sites thus given further consideration was site No. 7, Alameda. In connection with said site it was stated in Part 5 of said report (House Document No. 1946, 64th Congress, 2nd Session) at pages 24 and 25:

"SITE No. 7. ALAMEDA.

"19. *This site consists of tide and submerged land* lying immediately south of the Alameda Mole and west of the city of Alameda. . . ."

"* * * * * * * *

"* * * This site possesses a number of important advantages, viz:

"First. *The land is held in public ownership and can be obtained free of cost for the use of the United States through joint action taken by the State of California and the city of Alameda.* Legislation passed by California since Report No. 2 was presented is explained by letter from the mayor of Alameda of July 16, 1917, Appendix E, part 2, and indicates that the only steps necessary to turn this area over to the United States is to present the matter to the electors of Alameda for confirmation, which will be done any time desired, and there seems to be no doubt as to the electors confirming the grant."

(c) Attached to and made a part of Part 5 of said Report and contained in Appendix E, Part 1, thereof, are copies of certain correspondence between the senior member of said Commission and the United States Attorney for the Northern District of California relative to the acquisition by the United States of the tide and submerged lands comprising said site No. 7. By a letter dated January 16, 1917, and addressed to the senior member of said Commission, one Edward K. Taylor, an attorney at law, of Alameda, California, called the attention of said Commission to the fact that the State of California, by an Act of the Legislature approved June 11, 1913 (Stats. 1913, page 707) had granted to the City of Alameda all tide and submerged lands below the line of ordinary high tide within said City for harbor purposes, subject to the condition, however, that said City should not grant or convey any part of said land. It was suggested in said letter that such grant by the State of California might be amended by the Legislature in order to permit the transfer of tide and submerged lands to the United States Government as a site for a naval base or naval station. On January 19, 1917, the senior member of said Commission sent to the United States Attorney in San Francisco, California, a telegram reading as follows:

> "Have wired Edward K. Taylor, Alameda, suggesting he confer with you in *formulating legislation permitting Alameda to cede tidelands to Government* for naval purposes. Desirable that such legislation be broad enough to grant similar authority to other localities in the State if this will not complicate situation, causing delay. Alameda site is simply one

of several now under consideration. Commission has no authority to bind Government in any way. Letter follows."

Said United States Attorney replied to said senior member of said Commission by a telegram dated January 23, 1917, reading as follows:

"San Francisco, Cal., January 23, 1917.

"Rear Admiral J. H. Helm, Bremerton, Wash.

"Have given consideration to Alameda site matter; also conferred with mayor and city attorney. *The rights of Alameda in this tideland are contingent and will probably be lost unless additional legislation granted this session.* Present belief is that grant should come direct from State to Government, and city should then consent or allow her present rights to lapse, thus confirming Government's title. City charter and also terms present grant, should same become operative, would entail serious difficulties that might be impossible to overcome. *Have decided, with your permission, to prepare bill making grant direct to Government.* Does this meet your approval? If so, have you any suggestions as to boundaries or other provisions to go in bill? Three days only to introduce bill if method suggested by city be adopted. A pending bill already introduced could be amended. Introduction of bill I suggest would enable matter to be carefully considered and proper choice be made between the two methods. Answer immediately.

PRESTON, United States Attorney."

The course of action recommended by said United States Attorney in said telegram was approved by the senior

member of said Commission by a telegram, dated January 23, 1917, reading as follows:

"NAVY YARD, BREMERTON, WASH.,

"January 23, 1917

"J. W. PRESTON
United States District Attorney, San Francisco, Cal.:

"Replying to your telegram to-day, bill making grant direct to Government, as recommended by you, satisfactory, with understanding that grant becomes effective only if Government should definitely select this site for naval purposes within reasonable time. Desirable also to provide, if practicable, for city's rights to be revived if Government does not use this ground, so that it would lose nothing by this arrangement. Suggest matter of boundaries be left as open as possible, as in absence of any subsurface examination no definite location practicable at this time.

J. M. HELM."

Thereafter the California Legislature considered the proposal made by said United States Attorney pursuant to the foregoing correspondence, and by an Act approved May 24, 1917 (Stats. 1917, page 907) the said Legislature amended the Act by which the State of California had granted to the City of Alameda all tide and submerged lands within its boundaries (Stats. 1913, page 707) to authorize said city to "grant, give, convey and alien such lands or any portion thereof, forever to the United States for public purposes of the United States;" with the approval of a majority of the electors of said city. Said Act of 1917 further provided that the right of the state (reserved in said Act of 1913) to the free use of

wharves, docks, piers and other improvements constructed on said lands should not apply to improvements constructed by the United States on such lands conveyed to the United States.

(d) Attached to and made a part of Part 5 of said Report of said Commission on Navy Yards and Naval Stations and forming a part of Appendix E thereof, are copies of certain correspondence between the senior member of said Commission and the United States Attorney for the Northern District of California with respect to the title to certain tide and submerged lands then forming in San Pablo Bay near Mare Island and certain tide and submerged lands lying to the north of Goat Island in San Francisco Bay. Under date of February 17, 1917, the said United States Attorney for the Northern District of California, addressed a letter to the senior member of said Commission, which letter reads as follows:

"SAN FRANCISCO, CAL., February 17, 1917.

"Rear Admiral J. M. HELM, U. S. Navy, Commission on Navy Yards and Naval Stations, Washington, D. C.

"Sir: Replying in part to your letters of December 11 and 16 regarding the tidal lands which are forming in San Pablo Bay, adjacent to the southwest shore of Mare Island, Cal., and tidelands lying to the north of Goat Island, in San Francisco Bay, your attention is invited to an act of the Legislature of the State of California, of March 9, 1897, which provides as follows:

" 'The people of the State of California, represented in senate and assembly, do enact as follows:

"' 'SECTION 1. All the right and title of the State of California in and to the parcels of land extending from high-water mark out to three hundred yards beyond low-water mark, lying adjacent and contiguous to such lands of the United States in this State as lie upon tidal waters and are held, occupied, or reserved for military purposes or defense, lying adjacent and contiguous to any island, the title to which is in the United States, or which island is reserved by the United States for any military or naval purposes or for defense, are hereby granted, released, and ceded to the United States of America; the boundaries of each parcel of land hereby granted, released, and ceded to the United States to be a line along high-water mark, a line three hundred yards out beyond low-water mark, and lines at right angles to high-water mark, at the points where the boundaries of the adjacent lands of the United States touch high-water mark:'

* * * * * * * *

"I do not know whether the lands referred to in your letters exceed in extent the lands granted by the above statute, as we have no maps showing the extent of the tidal lands referred to in the act.

"*The title of tidelands lying without the area referred to in this statute is in the State of California by right of sovereignty, unless the State has already disposed of same.* I have directed an inquiry to the surveyor general of the State of California as to the

latter proposition and will inform you further when I hear from him.

"It is our opinion that the theory of accretion does not apply to a case of tidelands forming adjacent to tidelands, the title to which is held by the United States. While in the State of California accretions to the soil belong to the owner of the bank (sec. 1014, California Civil Code), land cannot be claimed as an accretion where it is a sand bar forming in the bed of a stream and not above ordinary high-water mark; and an accretion caused by the erection of a wharf or other structure has been held not to belong to the owner of the bank.

"Respectfully,

"JNO. W. PRESTON, United States Attorney."

10. The War Department of the United States, through its District Engineer's Office at Los Angeles, in about the year 1942, prepared a written plan for the establishment of a Port of Embarkation at Los Angeles Harbor, and on said date said plan was communicated to the Board of Harbor Commissioners of the City of Los Angeles. Said plan considered the question of the most suitable of three sites in the Los Angeles Harbor for such purpose, being plans (a), (b) and (c). Said Report recommended the adoption of either plan (a) or plan (b) as being satisfactory to the War Department. Plan (a) involved the use of one of two parcels: Parcel 1 consisting of 111.6 acres; and Parcel 2 consisting of 49.4 acres, both parcels being tide and submerged lands lying in the Pacific Ocean and Bay of San Pedro, situated between the East and West Channels in the Outer Harbor of Los Angeles under lease to Outer Harbor Dock and Wharf Company, as hereinabove alleged, and between the lower fill at Fort

MacArthur and a line formed by the extension of the inshore area of the Outer Harbor Breakwater. Said Report, in discussing the advantages of the different plans and after noting that the Los Angeles Harbor Department officials favored the use of plans (a) and (b) rather than plan (c), stated in part as follows:

> "The construction of permanent facilities by a Governmental agency on other than government-owned land is forbidden by law, and *it will therefore be necessary for the United States to acquire ownership of either site selected.* It is believed the most satisfactory method whereby *the United States might acquire such ownership is by vote of the People of Los Angeles on the Act sponsored by the Harbor Department.*
>
> "At this time, however, to enable the War Department to choose between the two sites, it is requested that the Board of Harbor Commissioners submit a statement of the terms and conditions which they will recommend to be incorporated in an Act transferring all rights which the City may have in the various parcels of land shown in both red and blue." (This refers to the map attached.)
>
> "As a further aid in determining the extent of development desired, it is also requested that prices quoted be submitted by parcels as shown. It is understood that both sites will not be taken."

11. Numerous other reports, declarations and rulings of the War Department and the Navy Department that the State of California and its grantees, respectively, are the owners of the tide and submerged lands within the boundaries of the State of California, are set forth in preceding portions of this Second Affirmative Defense.